

TITLE 16. CALIFORNIA CODE OF REGULATIONS

Division 14. Board of Registered Nursing

Article 1. General Provisions Section

1402. Definitions.

For the purpose of this chapter, the term “board” means the California Board of Registered Nursing; and the term “code” means the Business and Professions Code.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2715, Business and Professions Code.

1403. Delegation of Certain Functions.

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his/her absence from the office of the board, his/her designee.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2708, Business and Professions Code.

1405. Authority of Executive Officer.

The executive officer is authorized to:

- (a) Plan, direct supervise and organize the work of the staff of the board.
- (b) Research nursing practice issues and proposed positions to the board based on the board's interpretation of the Nursing Practice Act and other related statutes or regulations.
- (c) Implement regulations adopted by the board.
- (d) Administer examinations, collect fees, issue licenses and permits and investigate complaints.
- (e) Implement and enforce all standards including those set for schools of nursing, which include inspecting and evaluating schools of nursing and making recommendations on accreditation.
- (f) Manage funds and administer the fund and budget according to board directions.
- (g) Report to the board on implementation of board policies and responses to board activity.
- (h) Represent the board, as appropriate, to the public and the media.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2708, Business and Professions Code.

Article 2. Registration and Examination

1409. Issuance of License.

A license as a registered nurse shall be issued only by examination except as provided in Section 2732.1(b) of the code.

1409.1. Filing of Names and Addresses.

Each person holding a certificate, license or any other authority to practice nursing or engage in any activity under any laws administered by the board shall file his/her current name and mailing address with the board at its office in Sacramento within thirty (30) days after any change of name or mailing address, giving both old and new name, and address, as appropriate.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2715, Business and Professions Code.

1410. Application.

(a) An application for a license as a registered nurse by examination shall be submitted on an application form provided by the board, and filed with the board at its office in Sacramento. An application shall be accompanied by the fee and

such evidence, statements or documents as therein required including evidence of eligibility to take the examination. The applicant shall submit an additional application and fee for the examination to the board or to its examination contractor, as directed by the board. The Board shall provide the contractor's application to the applicant. No license shall be issued without a complete transcript on file indicating successful completion of the courses prescribed by the board for licensure or documentation deemed equivalent by the Board.

(b) An application for a license as a registered nurse without examination under the provisions of Section 2732.1(b) of the code shall be submitted on an application form prescribed and provided by the board, accompanied by the appropriate fee and by such evidence, statements, or documents as therein required, and filed with the board at its office in Sacramento.

(c) The applicant shall be notified in writing of the results of the evaluation of his/her application for license if the application is rejected.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 480, 2729, 2732.1, 2733, 2736, 2736.5, 2736.6, 2737, and 2815 Business and Professions Code.

1410.1. Application Processing Times.

(a) Within 90 calendar days of receipt of an application for original licensure as a registered nurse, provided under the provisions of section 2732.1 of the Code, the board shall inform the applicant in writing that it is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(b) Within 390 calendar days from the date of filing of a completed examination application for original licensure as a registered nurse, the board shall inform the applicant in writing of its decision regarding the application. This time period applies to applicants whose application is complete on the examination deadline date and who take the first available examination.

(c) Within 365 calendar days from the date of filing a completed application for original licensure as a registered nurse without examination, the board shall inform applicant in writing of its decision regarding the application.

(d) The board's actual time periods for processing an application for original licensure as a registered nurse, from the receipt of the initial application to the final decision, based on the two years preceding the proposal of this section were as follows:

| Application By Examination | | Application Without Examination | |
|----------------------------|----------|---------------------------------|----------|
| Minimum | 127 days | Minimum | 11 days |
| Median | 183 days | Median | 62 days |
| Maximum | 387 days | Maximum | 332 days |

Time periods take into account section 1410.4(e) which provides for abandonment of incomplete applications after one year.

Note: Authority cited: Section 2715, Business and Professions Code; and Section 15376, Government Code. Reference: Section 2732.1, Business and Professions Code; and Section 15376, Government Code.

1410.4. Abandonment of Application.

(a) An applicant whose application for examination has been accepted shall be deemed to have abandoned the application if he/she does not take such examination within a two-year period from the date of the written notice of eligibility to take the examination.

(b) An applicant whose application for examination has been rejected shall be deemed to have abandoned the application if he/she does not submit evidence that he/she has removed the deficiencies specified in the written evaluation notice and take an examination within a three-year period from the date of the written evaluation notice.

(c) An applicant whose application for license without examination has been rejected shall be deemed to have abandoned the application if he/she does not submit evidence that he/she has removed the deficiencies specified in the written evaluation notice within a three-year period from the date of the written evaluation notice.

(d) Submission of additional data, requests for reconsideration or re-evaluation, or other inquiries or statements involving an application shall not extend the respective time periods specified in subdivisions (a), (b), (c), and (e) of this section.

(e) An applicant whose application for license is incomplete shall be deemed to have abandoned the application if he/she does not submit all required documents, data and information within a period of one year from the date of mailing to him/her by the board of a written notice addressed to the last address on file with the board.

(f) An application submitted subsequent to the abandonment of a former application shall be treated as a new application. The applicant must meet all current requirements in effect at the time of reapplication.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2732.1, Business and Professions Code.

1411.5. Examination Procedure.

The examination for licensure as a registered nurse shall be a written examination as determined by the board. The board may enter into a contractual agreement for said examination with a public or private organization.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2738 and 2740, Business and Professions Code.

1411.6. Examination Disclosure.

An applicant who takes the examination shall not disclose the contents of the written examination questions to anyone other than a person authorized by the Board. No one except as authorized by the Board shall solicit, accept, or compile information regarding the contents of written examination questions, either before, during or after the administration of any examination.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2740, Business and Professions Code.

1412. High School Education or the Equivalent.

An applicant must meet the general preliminary education requirement of a high school education in the United States or the equivalent. Upon request of the Board, an applicant shall provide evidence of education equivalent to completion of a high school course of study in the United States by submitting one of the following:

- (a) A high school diploma received from a U.S. high school.
- (b) A General Education Development Certificate.
- (c) A degree from any junior college, college or university accredited by a state agency authorized to accredit such institutions.
- (d) An evaluation by a high school, unified school district, junior college, college, university or board of education which the board determines, after review, establishes that an education equivalent to a high school education in the United States was obtained in this or another state or in any foreign country.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2736, Business and Professions Code.

1413. English Comprehension.

When the Board has reasonable doubt of an applicant's ability to comprehend the English language to a degree sufficient to permit him to discharge his duties as a Professional Nurse in this State with safety to the public, the Board shall require him to pass an examination to demonstrate such ability.

1414. Interim Permits.

(a) An applicant whose application for licensure in California by examination has been approved will be eligible for an interim permit if the applicant has completed the educational requirements for licensure in nursing. (If the applicant is taking the examination as a graduate, the interim permit may be issued upon graduation. If the applicant is taking the examination as a non-graduate, the interim permit may be issued upon completion of the educational requirements for licensure.)

(b) An interim permit is not renewable and is in effect to the expiration date or until the results of the examination are mailed, at which time it becomes null and void.

(c) A permittee shall practice under the direct supervision of a registered nurse who shall be present and available on the patient care unit during all the time the permittee is rendering professional services. The supervising registered nurse may delegate to the permittee any function taught in the permittee's basic nursing program which, in the judgment of the supervising registered nurse, the permittee is capable of performing.

(d) An interim permittee is not authorized to use any other title or designation than "I.P." or "permittee" or "nurse permittee" or "nurse interim permittee."

(e) As an applicant for a license, the permittee is subject to the disciplinary provisions of Sections 2761 and 2762 of the Business and Professions Code as is the Registered Nurse.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2732.1, Business and Professions Code.

1414.1. Foreign Licensees.

An applicant who is currently licensed in a foreign country and who meets the educational requirements in Section 2736 may be issued an interim permit, subject to the conditions set forth in subsections (b), (c), (d), and (e) of Section 1414.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2732.1, 2732.15 and 2736, Business and Professions Code.

1414.5. Temporary License.

(a) A person who meets the requirements of Section 2733 of the code may apply for a temporary license.

(b) An applicant whose application for a temporary license has been rejected shall be deemed to have abandoned the application if he/she does not submit evidence that he/she has removed the deficiencies specified in the written evaluation notice within a one-year period from the date of the written evaluation notice.

Note: Authority cited: Sections 2715 and 2733, Business and Professions Code. Reference: Section 2732.1, Business and Professions Code.

1415. Rescoring of Examination Papers.

(Repealer filed 10-2-96; operative 1-1-96 (Register 96, No. 40).

1417. Fees.

(a) Pursuant to sections 2815, 2815.1, 2815.7, 2815.5, 2830.7, 2831, 2833 and 2836.3 of the code, the following fees are established:

| | |
|---|-------|
| (1) Application fee for licensure by examination | \$75 |
| (2) Application fee for licensure by endorsement | \$50 |
| (3) Biennial license renewal fee | \$80 |
| (a) Renewal fee – BRN | \$75 |
| (b) RN Education Fund | \$ 5 |
| Administered by Office of Statewide Health Planning and Development | \$37 |
| (4) Penalty fee for failure to timely renew a license | \$37 |
| (5) The fee for approval of a continuing education provider | \$200 |
| (6) Biennial Fee for renewal of continuing education provider approval | \$200 |
| (7) Penalty fee for failure to renew a continuing education provider | \$100 |
| (8) Penalty fee for check returned unpaid | \$15 |
| (9) Interim permit fee | \$30 |
| (10) Temporary license fee | \$30 |
| (11) Fee for processing endorsement papers to other states | \$60 |
| (12) Certified copy of a school transcript | \$30 |
| (13) Duplicate license fee | \$30 |
| (14) Fee for evaluation of qualifications to use the title "nurse-practitioner" | \$75 |
| (15) Application fee for certificate as a nurse-midwife | \$75 |
| (16) Biennial Fee for renewal of nurse-midwife certificate | \$50 |
| (17) Penalty fee for failure to timely renew a nurse-midwife certificate | \$25 |
| (18) Fee for application for nurse-midwife equivalency examination | \$100 |
| (19) Application fee for nurse-anesthetist certificate | \$75 |
| (20) Biennial nurse-anesthetist certificate renewal fee | \$50 |
| (21) Penalty fee for failure to timely renew a nurse-anesthetist certificate | \$25 |
| (22) Application fee for drug/device furnishing number | \$50 |
| (23) Biennial Drug/device furnishing number renewal fee | \$30 |
| (24) Penalty fee for failure to timely renew a drug/device furnishing number | \$15 |
| (25) Application fee for public health nurse certificate | \$75 |

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 163.5, 2815, 2815.5, 2815.7, 2818, 2830.7, 2831, 2833, 2836.1, 2836.2 and 2836.3, Business and Professions Code.

1418. Criteria for Evaluation of Equivalent Armed Services Training and Experience.

A military applicant who has met the qualifications set forth in Section 2736.5 of the Code and who has completed a course of instruction that provided the knowledge and skills necessary to function in accordance with the minimum standards for competency set forth in Section 1443.5 and that contained the theoretical content and clinical experience

specified in Section 1426(c)(1) through (e)(7) is determined to have completed the course of instruction prescribed by the Board for licensure.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2736.5, Business and Professions Code.

1419. Renewal of License.

A renewal application shall be on the form provided by the board, accompanied by the fee specified in Section 1417(a)(3) and required information and filed with the board at its office in Sacramento.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2715 and 2811, Business and Professions Code.

1419.1. Inactive License.

A license may be maintained in an inactive status by paying the renewal fee as it becomes due. The licensee shall not practice nursing during the time the license is inactive.

To activate an inactive license, the licensee must submit a written request and evidence of 30 hours of approved continuing education taken during the two year period immediately preceding the request for activation.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2734, Business and Professions Code.

1419.2. Renewal Processing Times.

(a) Within 60 calendar days of receipt of a renewal form from a registered nurse, the board shall inform the nurse in writing that it is either complete and accepted for processing or that it is deficient and what specific information or documentation is required to complete the renewal form.

(b) Within 60 calendar days of receipt of a completed renewal form from a registered nurse, the board shall inform the nurse in writing of the renewal decision.

The board's actual time periods for processing registered nurse renewals, from the receipt of the initial renewal form to the final decision, based on the two years preceding the proposal of this section were as follows:

| | |
|---------|----------|
| Minimum | 9 days |
| Median | 19 days |
| Maximum | 107 days |

Note: Authority cited: Section 2715, Business and Professions Code; and Section 15376, Government Code. Reference: Section 2811, Business and Professions Code; and Section 15376, Government Code.

1419.3. Reinstatement of Expired License.

In the event a licensee does not renew his/her license as provided in Section 2811 of the code, the license expires.

(a) A licensee may renew an expired license within eight years following its expiration by paying the appropriate renewal and late fee and by evidence of 30 hours of continuing education taken within the prior two-year period ~~or~~.

(b) If eight years have passed following the expiration date of a license, a licensee shall be required to pass an examination to determine current clinical knowledge and fitness to resume the practice of professional nursing.

Note: Authority cited: Sections 2715 and 2811.5, Business and Professions Code. Reference: Sections 2811 and 2811.5, Business and Professions Code.

1419.4. Issuance of Duplicate License.

A licensee shall report a lost or stolen license within ten (10) days of the loss and shall request, in writing, replacement of the lost license and pay the fee specified in Section 1417(a)(13). A licensee may be required to submit a notarized statement explaining the circumstances of the loss, and/or file a license renewal form provided by the board.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2815, Business and Professions Code.

Article 3. Schools of Nursing

1420. Definitions.

For purposes of this article, the term:

- (a) "Accredited nursing program" means a school, program, department or division of nursing accredited under the provisions of Sections 2785 through 2789 of the code;
- (b) "Administration" means coordinating, directing and participating in all activities involving in developing, implementing and managing a nursing program;
- (c) "Clinically competent" means that a nursing program faculty member possesses and exercises the degree of learning, skill, care and experience ordinarily possessed and exercised by staff level registered nurses of the clinical unit to which the instructor is assigned;
- (d) "Clinical practice" means the application of nursing knowledge and skills in clinical facilities and participation in planned learning experiences in skills labs, by students, both of which are designed to meet course objectives;
- (e) "Learning experiences" means those activities planned for students by the faculty, which are designed to meet the objectives of the required course of instruction including the basic standards of competent performance;
- (f) "Course of instruction" means the minimum education program prescribed by the board for eligibility to take the licensing examination;
- (g) "Education program" means an organized plan of instruction;
- (h) "Nursing process" means the problem solving techniques of assessment, planning, implementing and evaluating a plan of care, which requires technical and scientific knowledge and judgmental and decision-making skills;
- (i) "Director" means the registered nurse faculty member who administers the program and who has the authority and responsibility for yearly fiscal planning of its resources;
- (j) "Faculty" means all nurses who teach in a nursing program accredited by the board;
- (k) "Non-faculty/preceptor" means all persons other than faculty members who meet the minimum qualifications of clinical teaching assistant and are selected by the nursing program to teach and/or supervise nursing students designated clinical areas;
- (l) "Sponsoring hospital" means a hospital which has implemented and is supporting a nursing program;
- (m) "Year" means an academic year.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2785-2788, Business and Professions Code.

1421. Application for Accreditation.

- (a) An educational institution or sponsoring hospital seeking accreditation of a new program shall:
 - (1) Notify the board in writing of its intent to offer a new program. Upon notification of such intent, a nursing consultant will be assigned to assist the proposed program with understanding the board's guidelines for the development of a new program.
 - (2) Submit a report in accordance with the board's guidelines for proposed programs.
 - (3) Appoint a director who meets the requirements of Section 1425(b). Such appointments shall be made upon acceptance of the plan for the proposed program.
 - (4) No later than six months prior to the enrollment of students, submit a formal proposal to the board demonstrating how the program will meet the requirements of Sections 1424 through 1430.
- (b) A representative of the board shall conduct a survey of the proposed program and shall submit a written report to the board.
- (c) The board shall consider the report at a public meeting at which representatives of the program may appear. The board may thereafter grant or deny accreditation and shall notify the program of its decision.
- (d) A material misrepresentation of fact by a nursing program in any information required to be submitted to the board is grounds for denial or revocation of the program's accreditation.

Note: Authority cited: Sections 2715, 2786 and 2786.6, Business and Professions Code. Reference: Sections 2786 and 2786.6, Business and Professions Code.

1422. Certificate of Accreditation.

- (a) A certificate of accreditation shall be issued to each nursing program when it is initially accredited by the board.
- (b) A certificate of accreditation shall be returned to the board when the program's accreditation has been revoked.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1423. Accreditation Requirements.

In order for a program to be accredited by the board or to retain its accreditation, it shall comply with all requirements set forth in this article and in Sections 2786 through 2788 of the code.

1424. Administration and Organization of the Nursing Program.

(a) There shall be a written statement of philosophy and objectives which serves as a basis for curriculum structure. Such statement shall take into consideration the individual difference of students, including their cultural and ethnic background, learning styles, goals, and support systems. It shall also take into consideration the concepts of nursing and man in terms of nursing activities, the environment, the health-illness continuum, and relevant knowledge from related disciplines.

(b) The policies and procedures by which the program is administered shall be in writing, shall reflect the philosophy and objectives of the program, and shall be available to all students.

(1) The nursing program shall have a written plan for evaluation of the total program, including admission and selection procedures, attrition and retention of students, and performance of graduates in meeting community needs.

(c) There shall be an organizational chart which identifies the relationships, lines of authority and channels of communication within the program, between the program and other administrative segments of the institution with which it is affiliated, and between the program, the institution and clinical agencies.

(d) The program shall have sufficient resources, including faculty, library, staff and support services, physical space and equipment to achieve the program's objectives.

(e) A sufficient period of time shall be set aside, by the institution, exclusively for the use of the director or his or her designee in the administration of the program.

(f) The program shall have a registered nurse faculty member who is knowledgeable and current regarding the program and the policies and procedures by which it is administered and who can perform the director's duties in that person's absence.

(g) The faculty shall have the primary responsibility for developing policies and procedures, planning, organizing, implementing and evaluating all aspects of the program.

(h) The faculty shall be adequate in type and number to develop and implement the program approved by the board, and shall include at least one qualified instructor in each of the areas of nursing listed in Section 1426 who shall be responsible for the educational program in that area. Nursing faculty members whose teaching responsibilities include subject matter directly related to the practice of nursing shall be clinically competent in the areas to which they are assigned.

(i) When non-faculty individuals participate in the instruction and supervision of students obtaining clinical experience, their responsibilities shall be described in writing and kept on file by the nursing program.

(j) The assistant director shall function under the supervision of the director. Assistant instructors and clinical teaching assistants shall function under the supervision of an instructor.

(k) The student/teacher ratio in the clinical setting shall be based on the following criteria:

- (1) acuity of patient needs;
- (2) objectives of the learning experience;
- (3) class level of the students;
- (4) geographic placement of students;
- (5) teaching methods; and
- (6) requirements established by the clinical agency.

1425. Faculty - Qualifications and Changes.

A program shall report to the board all changes in faculty including changes in teaching areas, prior to employment of or within 30 days after termination of employment of a faculty member. Such changes shall be reported on forms provided by the board. Faculty members shall possess the following qualifications:

(a) A nurse faculty member appointed on or after the effective date of these regulations shall hold a valid, active license issued by the board.

(b) The registered nurse director of the program shall have:

- (1) A Master's or higher degree from an accredited college or university which includes course work in nursing, education or administration;
- (2) A minimum of one year's experience in an administrative position;
- (3) A minimum of two years' experience teaching in pre-or post-licensure nursing programs;
- (4) At least one year's experience as a registered nurse providing direct patient care; or
- (5) Equivalent experience and/or education, as determined by the board.

(c) The registered nurse assistant director shall meet the education requirements set forth in subsection (b)(1) above and the experience requirements set forth in subsections (b)(3) and (b)(4) above or such experience as the board determines to be equivalent.

(d) An instructor shall meet the following requirements:

(1) Those set forth in subsections (b)(1) and (b)(4) above; and

(2) Completion of at least one year's experience teaching courses related to nursing or a course which includes practice in teaching nursing.

(e) An assistant instructor shall have:

(1) A baccalaureate degree from an accredited college which shall include courses in nursing, or in natural, behavioral or social sciences relevant to nursing practice;

(2) At least one year's continuous, full-time experience in direct patient care practice as a registered nurse.

(f) A clinical teaching assistant shall have had at least one year's experience, within the previous five years, as a registered nurse providing direct patient care.

Note: Authority cited: Section 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1425.1. Faculty Responsibilities.

(a) Each faculty member shall assume responsibility and accountability for instruction, evaluation of students, and planning and implementing curriculum content.

(b) The registered nurse faculty member shall be responsible for clinical supervision only of those students enrolled in the registered nursing program.

Note: Authority cited: Sections 2715, 2786 and 2786.6, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1426. Required Curriculum; Prior Approval.

(a) The curriculum of a nursing program shall be that set forth in this section. A program's curriculum shall not be implemented or revised until it has been approved by the board.

(b) The curriculum shall reflect a unifying theme, which includes the nursing process as defined by the faculty, and shall be designed so that a nurse who completes the program will have the knowledge and skills necessary to function in accordance with the minimum standards for competency set forth in Section 1443.5.

(c) The curriculum shall consist of not less than fifty-eight (58) semester units, or eighty-seven (87) quarter units, which shall include at least the following number of units in the specified course areas:

(1) Art and science of nursing, thirty-six (36) semester units or fifty-four (54) quarter units, of which eighteen (18) semester or twenty-seven (27) quarter units will be in theory and eighteen (18) semester or twenty-seven (27) quarter units will be in clinical practice.

(2) Communication skills, six (6) semester or nine (9) quarter units. Communication skills shall include principles of verbal, written and group communication.

(3) Related natural, behavioral, and social sciences, sixteen (16) semester or twenty-four (24) quarter units.

(d) Theory and clinical practice shall be concurrent in the following nursing areas: medical-surgical, maternal/child, mental health, psychiatric nursing and geriatrics. Instruction will be given in, but not limited to, the following: personal hygiene, human sexuality, client abuse, cultural diversity, nutrition (including therapeutic aspects), pharmacology, legal, social and ethical aspects of nursing, nursing leadership and management.

(e) The following shall be integrated throughout the entire nursing curriculum:

(1) Nursing process;

(2) Basic intervention skills in preventive, remedial, supportive and rehabilitative nursing;

(3) Physical, behavioral and social aspects of human development from birth through all age levels;

(4) The knowledge and skills required to develop collegial relationships with health care providers from other disciplines;

(5) Communication skills including principles of verbal, written and group communications;

(6) Natural sciences including human anatomy, physiology and microbiology; and

(7) Related behavioral and social sciences with emphasis on societal and cultural patterns, human development, and behavior relevant to health-illness.

(f) The course of instruction shall be presented in semester or quarter units under the following formula:

(1) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(2) Three (3) hours of clinical practice each week throughout a semester or quarter equals one (1) unit.

Note: Authority cited: Sections 2715 and 2786.6, Business and Professions Cod. Reference: Sections 2785-2788, Business and Professions Code.

1427. Clinical Facilities.

(a) A nursing program shall not utilize agencies and/or community facilities for clinical experience without prior approval by the board. Each program must submit evidence that it has complied with the requirements of subdivisions (b) and (c) of this section and the policies outlined by the board.

(b) A program which utilizes agencies and/or community facilities for clinical experience shall maintain written objectives for student learning in such facilities, stated in measurable performance terms, and shall assign students only to facilities which can provide the experience necessary to meet those objectives.

(c) Each such program shall maintain written agreements with such facilities and such agreements shall include the following:

(1) Assurance of the availability and appropriateness of the learning environment in relation to the program's written objectives;

(2) Provision for orientation of faculty and students;

(3) A specification of the responsibilities and authority of the facility's staff as related to the program and to the educational experience of the students;

(4) Assurance that staff is adequate in number and quality to insure safe and continuous health care services to patients;

(5) Provisions for continuing communication between the facility and the program; and

(6) A description of the responsibilities of faculty assigned to the facility utilized by the program.

Note: Authority cited: Sections 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1428. Student Participation.

(a) Students shall be provided opportunity to participate with the faculty in the identification of policies and procedures related to students including but not limited to:

(1) Philosophy and objectives;

(2) Clinical facilities;

(3) Learning experiences; and

(4) Curriculum, instruction and evaluation of the various aspects of the program.

(b) The program shall have a procedure for resolving student grievances.

(c) Tools used to evaluate students' progress and performance and clinical learning experiences shall be stated in measurable terms directly related to course objectives.

Note: Authority cited: Sections 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1428.6. Policies Relating to Establishing Eligibility for Examination.

(a) At least two weeks prior to its established graduation date, the nursing program shall submit to the board a roster of names of those students and their expected date to successfully complete required course work. Except as provided below such a student shall be deemed eligible to take the examination after the date on which the student successfully completed the required course work.

(b) The nursing program shall notify the board immediately by telephone or facsimile of any student who fails to maintain eligibility and such individuals shall be deemed ineligible to take the examination.

Note: Authority cited: Sections 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1429. Licensed Vocational Nurses.

(a) An applicant who is licensed in California as a vocational nurse is eligible to apply for licensure as a registered nurse if such applicant has successfully completed the courses prescribed below and meets all the other requirements set forth in Section 2736 of the code. Such applicant shall submit evidence to the board, including a transcript, of successful completion of the requirements set forth in subsection (c) and of successful completion or challenge of courses in physiology and microbiology comparable to such courses required for licensure as a registered nurse.

(b) The school shall offer objective counseling of this option and evaluate each licensed vocational nurse applicant for admission to its registered nursing program on an individual basis. A school's determination of the prerequisite courses

required of a licensed vocational nurse applicant shall be based on an analysis of each applicant's academic deficiencies, irrespective of the time such courses were taken.

(c) The additional education required of licensed vocational nurse applicants shall not exceed a maximum of thirty (30) semester or forty-five (45) quarter units. Courses required for vocational nurse licensure do not count toward fulfillment of the additional education requirement. However, other courses comparable to those required for licensure as a registered nurse, as specified in Section 1426, may be counted toward fulfillment of the additional education requirement.

Nursing courses shall be taken in an accredited school and shall be beyond courses equivalent to the first year of professional nursing courses. The nursing content shall include nursing intervention in acute, preventive, remedial, supportive, rehabilitative and teaching aspects of nursing. Theory and courses with concurrent clinical practice shall include advanced medical-surgical, mental health, psychiatric nursing and geriatric nursing. The nursing content shall include the basic standards for competent performance prescribed in Section 1443.5 of these regulations.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2736, 2736.6 and 2786, Business and Professions Code.

1430. Change of Name or Address.

Each school holding a certificate of accreditation shall file its legal name and current mailing address with the board at its principal office and shall notify the board at said office of any change of name or address within thirty (30) days after such change. It shall give both the old and the new name or address.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2785, Business and Professions Code.

Article 3.5. Citations and Fines

1435. Citations - Content and Service.

(a) The executive officer of the board or his/her designee, in lieu of filing an accusation against any licensee, may issue a citation which may contain an administrative fine and/or order of abatement against that licensee for any violation of law which would be grounds for discipline or of any regulation adopted by the board pursuant thereto.

(b) Each citation shall be in writing, and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.

(c) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation, or both.

(d) The citation shall inform the cited individual of the right to an informal citation conference concerning the matter and of the right to an administrative hearing.

(e) The citation shall be served upon the individual personally or by certified mail.

Note: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

1435.1. Exceptions.

A citation shall not be issued in any of the following circumstances:

(a) The violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection.

(b) The licensee's conduct displayed a disregard for the patient and/or the patient's rights. This includes but is not limited to physical abuse; neglect; abandonment; fiduciary abuse (as defined in Article 2, Chapter 11 commencing with Section 15610 of the Welfare and Institutions Code with additional modification of the definitions to include all types of patients); or the deprivation of care or services which are necessary to avoid physical harm or mental suffering.

(c) The licensee failed to comply with any requirement of any previous citation, including any order of abatement or fine.

(d) The licensee has been previously disciplined by the board or has previously been denied a license by the board for the same or similar actions.

(e) The violation involves unprofessional conduct related to controlled substances or dangerous drugs.

(f) The violation involves unprofessional conduct related to sexual abuse, misconduct or relations with a patient.

(g) The licensee was convicted of an offense substantially related to the qualifications, functions, and duties of a registered nurse and there is insufficient evidence of rehabilitation.

1435.2. Violations and Fines.

In any citation which includes a fine, the executive officer of the board or his/her designee shall assess fines for the following violations in accordance with the following schedule provided, however, in no case shall the total fines exceed \$2,500 for each investigation. The summary descriptions below are for convenience of reference only, and do not include the complete text or all required elements of the listed statutes and regulations.

| <i>Business and Professions Code Section</i> | <i>Summary Description</i> | <i>Range of Fines</i> |
|--|---|-----------------------|
| 119(a) | Displaying, permitting to be displayed or possessing an invalid or fraudulent license | \$ 100 to \$2,500 |
| 119(b) | Loaning license to or knowingly permitting the use by another | 100 to 2,500 |
| 119(c) | Displaying or representing that license not issued to individual is his/her license | 100 to 2,500 |
| 119(d) | Failing to surrender a suspended, revoked or canceled license | 100 to 2,500 |
| 119(f) | Duplicating or reproducing license in such a way that it could be mistaken for a valid license or displaying or possessing an illegally reproduced license | 100 to 2,500 |
| 125 | Conspiracy with unlicensed person | 1,000 to 2,500 |
| 125.6 | Refusing to perform licensed activity; aiding or inciting refusal of performance by another licensee; discriminating in or restricting performance of activities because of race, color, sex, religion, ancestry, disability, marital status or national origin | 1,000 to 2,500 |
| 136 | Change of address; Failure to notify Board within 30 days | 100 to 2,500 |
| 496 | Examination security subversion or examination administration misconduct | 1,000 to 2,500 |
| 498 | Securing a license by fraud, deceit or knowing misrepresentation or knowingly omitting a material fact | 1,000 to 2,500 |
| 499 | False statement by a licensee in support of another person's license application | 100 to 2,500 |
| 810(a) | Knowingly present false or fraudulent insurance claim; knowingly preparing writings with intent to use in support of such a claim | 100 to 2,500 |
| 2725.1 | Dispensing drugs or devices in a pharmacy; compounding drugs; dispensing controlled substances | 1,000 to 2,500 |
| 2732 | Practicing without an active status license | 1,000 to 2,500 |
| 2732.05 | Failing to ascertain status of registered nurse prior to employment | 100 to 2,500 |

| | | |
|------------|---|----------------|
| 2761(a) | Unprofessional conduct | 1,000 to 2,500 |
| 2761(a)(3) | Using advertising relating to nursing which violates Business and Professions Code section 17500 | 100 to 2,500 |
| 2761(a)(4) | Denial of licensure or discipline by another state or territory or governmental agency | 100 to 2,500 |
| 2761(b) | Procuring certificate by fraud, misrepresentation or mistake | 1,000 to 2,500 |
| 2761(d) | Violating or abetting the violation of the Nursing Practices Act | 100 to 2,500 |
| 2761(e) | False statement on application for a certificate or license | 100 to 2,500 |
| 2761(g) | Impersonating an examination applicant | 1,000 to 2,500 |
| 2761(h) | Impersonating another licensed practitioner or allowing another to use certificate or license | 1,000 to 2,500 |
| 2761(i) | Assisting in the violation of the Medical Practices Act | 100 to 2,500 |
| 2761(j) | Holding out as a nurse practitioner without meeting standards established by the board or holding out as being certified as a nurse anesthetist, nurse midwife or public health nurse unless certified by the board | 1,000 to 2,500 |
| 2795 | Unlicensed practice or indication of practice | 1,000 to 2,500 |
| 2796 | Illegal use of title; impersonation of a licensee | 1,000 to 2,500 |
| 2797 | False representation pertaining to examination or application for licensure; impersonation or aiding in the impersonation of examination applicant | 1,000 to 2,500 |

| <i>Title 16 Code of Regulations Section</i> | <i>Description</i> | <i>Range of Fines</i> |
|---|--|-----------------------|
| 1411.6 | Examination Disclosure | \$ 1,000 to 2,500 |
| 1414(c) | Practicing without adequate supervision as an interim permittee; failing to provide adequate supervision of an interim permittee | 1,000 to 2,500 |
| 1414(d) | Incorrect use of title while working as an interim permittee | 100 to 2,500 |
| 1443.5 | Failure to comply with standards of competent performance | 1,000 to 2,500 |
| 1451(d) | Claiming partial credit for continuing education courses | 100 to 2,500 |
| 1451(e) | Failing to retain continuing education certificates or grade slips for four years/failure to submit to board when requested | 100 to 2,500 |
| 1453 | Falsifying renewal application(s) | 100 to 2,500 |
| 1474 | Failure to follow standardized procedures guidelines | 100 to 2,500 |

Note: Authority cited: Sections 125.9, 148, 2715, and 2761(d), Business and Professions Code. Reference: Sections 119, 125, 125.6, 125.9, 136, 148, 496, 498, 499, 810(a), 2725.1, 2732, 2732.05, 2761, 2795, 2796, and 2797, Business and Professions Code and Sections 1411.6, 1414(c), 1414(d), 1443.5, 1451(d), 1451(e), 1453, and 1474, Title 16, California Code of Regulations.

1435.3. Citations for Unlicensed Individual.

The executive officer of the board or his/her designee may issue citations, in accordance with Section 148 of the Code, against any individual (as defined in section 302(e) of the Code) who is performing or who has performed services for which licensure is required under the Nursing Practice Act or regulations adopted pursuant thereto. Citations issued under this section shall meet the requirements set forth in subdivisions (b), (c), (d), and (e) of Section 1435 and shall be subject to the provisions of Sections 1435.4, 1435.5 and subdivisions (a), (b), and (c) of Section 1435.6. Each citation issued under this section shall contain an order of abatement. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code, Reference: Sections 125.9, 148 and 302(e), Business and Professions Code.

1435.4. Criteria to be Considered in Assessing a Fine or Order of Abatement.

In any citation which includes a fine or order of abatement, the following factors shall be considered in determining the amount of the fine to be assessed or the terms of the order of abatement:

- (a) Gravity of the violation.
- (b) History of previous violations of the same or a similar nature.
- (c) Length of time that has passed since the date of the violation.
- (d) Consequences of the violation, including potential or actual patient harm.
- (e) The good or bad faith exhibited by the cited individual.
- (f) Evidence that the violation was willful.
- (g) The extent to which the individual cooperated with the board's investigation.
- (h) The extent to which the individual has remediated any knowledge and/or skills deficiencies which could have injured a patient.
- (i) Any other mitigating or aggravating factors.

Note: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

1435.5. Contested Citations.

(a) In addition to requesting an administrative hearing provided for in subdivision (b)(4) of Section 125.9 of the Code, the cited individual may, within 14 calendar days after service of the citation, submit a written request for an informal citation conference with the executive officer or his/her designee. A request for an informal citation conference shall be deemed a request for an administrative hearing.

(b) The executive officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal citation conference with the individual cited and his/her legal counsel or authorized representative, if desired.

(c) The executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine or order of abatement, at the conclusion of the informal citation conference. A written decision stating the reasons for the decision shall be mailed to the individual and his/her legal counsel, if any, within 14 calendar days from the date of the informal citation conference.

If the citation is dismissed, the request for an administrative hearing shall be deemed withdrawn. If the citation is affirmed or modified, the individual may, in his/her discretion, withdraw the request for an administrative hearing or proceed with the administrative hearing process.

Note: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

1435.6. Compliance with Citation/Order of Abatement.

(a) Orders of abatement may be extended for good cause. If a cited individual who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, then he/she may request from the executive officer or his/her designee an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) If a citation is not contested, or if the order is appealed and the individual cited does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the individual cited.

(d) If a fine is not paid after a citation has become final, the fine shall be added to the cited individual's license renewal fee. A license shall not be renewed without payment of the renewal fee and fine.

Note: authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

1435.7. Notification to Other Boards and Agencies.

After a citation has become final, it shall be reported to other boards of registered nursing and other regulatory agencies.

Note: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

Article 4. Grounds for Discipline, Disciplinary Proceedings and Rehabilitation

1442. Gross Negligence.

As used in Section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2761, Business and Professions Code.

1443. Incompetence.

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2761, Business and Professions Code.

1443.5. Standards of Competent Performance.

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2725 and 2761, Business and Professions Code.

1444. Substantial Relationship Criteria.

A crime or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences present or potential unfitness of a registered nurse to perform the functions authorized by his/her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) A conviction of child abuse;
- (b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6, Division 2 of the Business and Professions Code;
- (c) Conviction as a mentally disordered sex offender;
- (d) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4035 of the code;
- (e) Conviction for assault and/or battery.

Note: Authority cited: Sections 481 and 2715, Business and Professions Code. Reference: Sections 480, 481, 2736, 2761 and 2762, Business and Professions Code.

1444.5. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation:" (6/97) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Authority cited: Section 2715, Business and Professions Code, Sections 11400.20 and 11400.21, Government Code. Reference: Sections 2750-2759, 2761 and 2762 Business and Professions Code; Sections 11400.20 and 11425.50(c), Government Code.

1445. Criteria for Rehabilitation.

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

Note: Authority cited: Sections 482 and 2715, Business and Professions Code. Reference: Sections 483, 2736, 2761 and 2762, Business and Professions Code.

1445.1. Petition for Reinstatement.

(a) A person may petition for reinstatement of a license under the provisions of Section 11522 of the Government Code by:

- (1) Obtaining the appropriate forms from the board office in Sacramento and
- (2) Submitting the required form of petition and supplementary documentation to the board at least forty-five (45) days in advance of the date on which the person desires to be heard, as directed in the written instructions which accompany the forms.

(b) The burden of proving rehabilitation is upon the petitioner. When considering a petition for reinstatement of a license, the board shall evaluate and consider evidence of rehabilitation submitted by the petitioner, using those criteria specified in Section 1445 of this article.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 11522, Government Code.

Article 4.1. Diversion Program Guidelines

1446. Definitions.

As used in this article:

(a) "Program" means the alcohol and drug abuse and mental illness diversion program for registered nurses authorized pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2 of the Business and Professions Code.

(b) "Committee" means diversion evaluation committee consisting of the following members: Three registered nurses, one physician and one public member all of whom have expertise in the area of chemical dependency.

(c) "Board" means Board of Registered Nursing.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2770.1 and 2770.2, Business and Professions Code.

1447. Criteria for Admission.

An applicant shall meet the following criteria for admission to the program:

(a) Is a registered nurse licensed in this state.

(b) Resides in California.

(c) Is mentally ill or abuses alcohol and/or drugs in a manner which may affect the applicant's ability to safely perform the duties of a registered nurse.

(d) Voluntarily requests admission to the program.

(e) Agrees to undergo reasonable medical and/or psychiatric examinations necessary for evaluation for participation in the program.

(f) Cooperates by providing such medical information, disclosure authorizations and releases of liability as may be requested by the committee.

(g) Agrees in writing to comply with all elements of the diversion program.

(h) Has not had her/his license previously disciplined by the Board for substance abuse or mental illness.

(i) Has not been terminated from this or any other diversion program for non-compliance.

Note: Authority cited: Sections 2715 and 2770.7, Business and Professions Code. Reference: Section 2770.7, Business and Professions Code.

1447.1. Procedure for Review of Applicants.

The following procedures shall be used to review applicants for admission to the program:

(a) The program director and a nurse or physician consultant shall interview each applicant. They shall recommend such medical and/or psychiatric examinations as may be necessary to determine the applicant's eligibility for the program and shall request such other information, authorizations and releases as may be necessary for participation in the program. The DEC shall advise the applicant that the applicant is responsible for costs incurred for the examinations and rehabilitation aspects of the program.

(b) The program director and the nurse or physician consultant shall each make a recommendation to the committee as to whether the applicant should be admitted to the program.

(c) The committee shall review each application and make its decision on admission of the applicant based upon its evaluation and the recommendations from the program director and the nurse or physician consultant.

(d) The committee's decision on admission of an applicant shall be final.

Note: Authority cited: Sections 2715 and 2770.7, Business and Professions Code. Reference: Section 2770.7, Business and Professions Code.

1447.2. Causes for Denial of Admission.

The committee may deny an applicant admission to the program for any of the following reasons:

(a) The applicant does not meet the requirements set forth in Section 1447.

(b) Information is received by the board which, after investigation, indicates that the applicant may have violated a provision of the laws governing the practice of nursing, Chapter 6 (commencing with Section 2700) of Division 2 of the Code, excluding Section 2762.

(c) The applicant is diverting controlled substances for sale.

(d) The committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety or welfare.

Note: Authority cited: Sections 2715 and 2770.7, Business and Professions Code. Reference: Section 2770.7, Business and Professions Code.

1448. Causes for Termination from the Program.

The committee may terminate a nurse's participation in the program for any of the following reasons:

(a) Successful completion of the program designated by the committee.

(b) Failure to comply with the rehabilitation program designated by the committee.

(c) Failure to comply with any of the requirements set forth in Section 1447.

(d) Failure to substantially benefit from participation in the program.

(e) Receipt of information by the board which, after investigation, indicates the participant may have violated a provision of the laws governing the practice of nursing, Chapter 6 (commencing with Section 2700) of Division 2 of the Code, excluding Section 2762.

Note: Authority cited: Sections 2715 and 2770.7, Business and Professions Code. Reference: Section 2770.7, Business and Professions Code.

1448.1. Notification of Termination.

Whenever a nurse's participation is terminated for any reasons other than successful completion of the program, the committee shall, within thirty days, report such fact to the board in writing. The committee's written notification to the board shall consist solely of the participant's name and license number.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2770.11, Business and Professions Code.

1449. Confidentiality of Records.

(a) All board, committee and program records relating to application to and participation in the program shall be kept confidential pursuant to Section 2770.12 of the Code. Such records shall be purged when a nurse's participation in the program is terminated.

(b) Information or records received by the board prior to the acceptance of the applicant into the program or which do not relate to application for the program may be utilized by the board in any disciplinary or criminal proceedings instituted against the participant.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2770.12, Business and Professions Code.

Article 5. Continuing Education

1450. Definitions.

(a) For purposes of this Article:

(1) "Continuing Education" means the variety of forms of learning experiences, including, but not limited to, lectures, conferences, academic studies, in service education, institutes, seminars, workshops, extension studies, and independent/home study programs undertaken by registered nurses for relicensure. These learning experiences are meant to enhance the knowledge of the registered nurse in the practice of nursing in direct and indirect patient care.

(2) "Course" means a systematic learning experience, at least one hour in length, which deals with and is designed for the acquisition of knowledge, skills, and information in direct and indirect patient care.

(3) "Content Relevant to the Practice of Nursing" means content related to the development and maintenance of current competency in the delivery of nursing care as specified in Section 1456.

(4) "Independent/Home Study Courses" means continuing education courses offered for individual study by an approved provider.

(5) "Hour" means at least fifty (50) minutes of participation in an organized learning experience;

(6) “Approved Providers” means those individuals, partnerships, corporations, associations, organizations, organized health care systems, educational institutions, or governmental agencies offering continuing education as approved by the Board.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.1, Business and Professions Code.

1451. License Renewal Requirements.

(a) Pursuant to Section 2811 of the Code, each licensee shall pay the renewal fee and submit proof, satisfactory to the Board that during the preceding renewal period or preceding two years, the licensee has started and successfully completed thirty (30) hours of continuing education approved by the Board.

(b) Licensees shall submit proof to the Board of successful completion of the required number of approved continuing education hours by signing a statement under penalty of perjury, indicating compliance and agreeing to supply supporting documents on request.

(c) Licensees shall not be allowed to claim partial credit for a continuing education course, however, instructors who participate in a part of an offering may receive full credit if the total offering is attended.

(d) Licensees shall keep the certificates or gradeslips from academic institutions pursuant to Section 1458(b)(7) for four years from the date they complete approved continuing education courses and must submit such certificates or gradeslips to the Board when requested.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1451.1. Expiration of Licenses.

(a) Licenses issued by the Board will expire unless renewed. To renew a license, the applicant shall submit proof, satisfactory to the Board of completion of thirty (30) hours of continuing education and shall pay the renewal fee.

(b) A licensee who participates in and successfully completes a continuing education course which overlaps a renewal period may apply the credit earned for the renewal period in which the course ends.

(c) An expired license may, within eight years of the date of expiration, be reinstated by the Board if the applicant meets the requirements of Section 2811 of the Code and is otherwise eligible to obtain a reinstatement, and if the applicant meets the requirements set forth in Section 1419.3.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2811 and 2811.5, Business and Professions Code.

1451.2. Continuing Education Courses.

(a) Continuing Education course credit may be given for the following continuing education courses:

(1) Courses offered by an approved Provider as specified in Section 1454. In addition to classroom courses, courses may be designed by an approved Provider for participation in activities which include nursing practice, publishing and/or research, provided that such courses meet the requirements of Section 1456.

(2) Out of state courses which have been approved for voluntary or mandatory continuing education by Registered Nurse licensing agencies of other states and/or state nurses' associations, as well as offerings by nationally recognized health associations and/or their regional subdivisions provided that such courses meet the requirements of Section 1456.

(3) Out of state academic courses in an accredited *post-secondary institution which are related to the specific knowledge and/or technical skills required for the practice of nursing.

(4) Other courses as may be approved by the Board at its sole discretion.

*Minimum requirement is regional accreditation.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1452. Exemption from Continuing Education Requirements.

(a) During the first two years immediately following initial licensure in California or other jurisdictions, licensees shall be exempt from completion of the continuing education requirements specified in Section 1451.

(b) At the time of making application for renewal, an applicant may request exemption from continuing education requirements if:

(1) The licensee is requesting inactive status for the license; or

(2) The licensee can show evidence, satisfactory to the Board that

(A) he or she has been employed overseas for a period of one (1) year or more, or a resident overseas for a period of one (1) year or more and currently employed; or

(B) he or she is employed by a Federal Institution or Agency or one of the Military Services (USA), where that person is practicing nursing outside of the State of California on a California license, or

(C) he or she has had hardship of one or more years' duration, if

1. there is a total physical disability for one (1) year or more and verification of readiness or ability to return to work; or
2. there is a total disability of a member of the immediate family for whom licensee has total responsibility for one (1) year or more.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1453. Falsifying Renewal Application.

A licensee who falsifies or makes a material misrepresentation of fact on a renewal application will be subject to disciplinary action as provided for in Section 2750 of the Business and Professions Code.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2761 and 2811.5, Business and Professions Code.

1454. Approved Providers.

(a) For the purpose of this Article, the title “approved provider” can only be used when an individual, partnership, corporation, association, organization, organized health care system, educational institution or governmental agency, having committed no act which would lead to disciplinary action pursuant to Section 1459.1, has submitted a provider application on forms supplied by the Board, remitted the appropriate fee and has been issued a provider number.

(b) An individual, partnership, corporation, association, organized health care system, governmental agency, educational institution and other organizations may be issued only one provider number; provided, however, that any autonomous entity within such organization may be issued one provider number.

(c) An approved provider shall have a written and published policy, available on request, which provides information on:

- (1) refunds in cases of non-attendance
- (2) time period for return of fees
- (3) notification if course is canceled.

(d) The approved provider is required to accept full responsibility for each and every course, including, but not limited to recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor qualifications. When two or more providers co-sponsor a course, only one provider number shall be used for that course and that provider must assume full responsibility for recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor(s) qualifications.

(e) Providers may not grant partial credit for continuing education.

(f) Approved providers shall keep the following records for a period of four years in one location within the State of California, or in a place approved by the Board:

- (1) course outlines of each course given
- (2) record of time and places each course given
- (3) course instructor vitae or resumes
- (4) name and license number of registered nurses taking any approved course and a record of any certificate issued to them.

(g) Approved providers must notify the Board, within thirty (30) days, of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course(s), including name and address changes.

(h) Provider approval is non-transferable.

(i) The Board shall audit records, courses, instructors and related activities of a provider.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1455. Continuing Education Hours.

The Board will accept hours of approved continuing education on the following bases:

- (a) Each hour of theory shall be accepted as one hour of continuing education.
- (b) Each three hours in course-related clinical practice will be accepted as one hour of continuing education.
- (c) Courses less than one (1) hour in duration will not be approved.
- (d) One (1) CEU (continuing education unit) is equal to ten (10) continuing education contact hours.
- (e) One (1) academic quarter unit is equal to ten (10) continuing education hours.

(f) One (1) academic semester unit is equal to fifteen (15) continuing education hours.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1456. Continuing Education Courses.

The content of all courses of continuing education must be relevant to the practice of nursing and must:

- (a) be related to the scientific knowledge and/or technical skills required for the practice of nursing, or
- (b) be related to direct and/or indirect patient/client care.

(c) Learning experiences are expected to enhance the knowledge of the Registered Nurse at a level above that required for licensure. Courses related to the scientific knowledge for the practice of nursing include basic and advanced courses in the physical, social, and behavioral sciences, as well as advanced nursing in general or specialty areas. Content which includes the application of scientific knowledge to patient care in addition to advanced nursing courses may include courses in related areas, i.e., human sexuality; death, dying, and grief; foreign languages (conversational); therapeutic interpersonal relationship skills; pharmacology; and those related to specialty areas of nursing practice.

Courses in nursing administration, management, education, research, or other functional areas of nursing relating to indirect patient/client care would be acceptable.

Courses which deal with self-improvement, changes in attitude, financial gain, and those courses designed for lay people are not acceptable for meeting requirements for license renewal.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1457. Instructor Qualifications.

(a) It is the responsibility of each approved provider to use qualified instructors.

(b) Instructors teaching approved continuing education courses shall have the following minimum qualifications:

(1) The registered nurse instructor, shall

(A) hold a current valid license to practice as a registered nurse and be free from any disciplinary action by this Board, and

(B) be knowledgeable, current and skillful in the subject matter of the course as evidenced through:

1. holding a baccalaureate or higher degree from an accredited college or university and validated experience in subject matter; or

2. experience in teaching similar subject matter content within the two years preceding the course; or

3. have at least one year's experience within the last two years in the specialized area in which he/she is teaching.

(2) The non-nurse instructor, shall

(A) be currently licensed or certified in his/her area of expertise if appropriate, and

(B) show evidence of specialized training, which may include, but not be limited to a certificate of training or an advanced degree in given subject area, and

(C) have at least one year's experience within the last two years in the practice of teaching of the specialized area in which he/she teaches.

(3) Nothing in this Section exempts an individual from the legal requirements of the California Nursing Practice Act.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1458. Course Verification.

(a) Approved providers shall issue a document of proof, i.e., gradeslip, or transcript to each licensee to show that the individual has met the established criteria for successful completion of a course.

(b) A certificate or diploma documenting successful completion shall contain the following information:

(1) Name of student and registered nurse license number or other identification number.

(2) Course title.

(3) Provider name (as approved by the Board), address, and provider number.

(4) Date of course.

(5) Number of continuing education contact hours.

(6) Signature of instructor and/or provider, or provider designee.

(7) This document must be retained by the licensee for a period of four years after the course concludes.

(c) Course verification must be issued within a reasonable length of time after the completion of the course, not to exceed ninety days.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1459. Advertisement.

Information disseminated by approved providers publicizing continuing education shall be true and not misleading and shall include the following:

1. The statement "Provider approved by the California Board of Registered Nursing, Provider Number ____ for ____ contact hours."
2. Provider's policy on refunds in cases of non-attendance by the registrant.
3. A clear, concise description of the course content and/or objectives.
4. Provider name as officially on file with the Board.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

1459.1. Withdrawal of Approval.

(a) The Board may withdraw its approval of a provider or deny a provider application for causes which include, but are not limited to, the following:

- (1) Conviction of a felony or any offense substantially related to the activities of a provider.
- (2) Failure to comply with any provision of Chapter 6, Division 2, of the Business and Professions Code and/or Chapter 14 of Title 16 of the California Code of Regulations.

(b) Any material misrepresentation of fact by a continuing education provider or applicant in any information required to be submitted to the Board is grounds for withdrawal of approval or denial of an application.

(c) The board may withdraw its approval of a provider after giving the provider written notice setting forth its reason for withdrawal and after affording a reasonable opportunity to be heard by the board or its designee after thirty (30) days written notice of the specific charges to be heard.

(d) Should the BRN deny the provider approval, applicant has the opportunity to formally appeal the action to the Board within a thirty (30) day period.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

Article 6. Nurse-Midwives

1460. Qualifications for Certification.

(a) Initial certification.

(1) An applicant for certification to practice midwifery must meet the following conditions:

(A) Be licensed as a registered nurse under the Nursing Practice Act, Business and Professions Code, Section 2700, et seq. , and

(B) Be a graduate of a Board approved program in nurse-midwifery.

(2) Equivalency. A registered nurse applicant not meeting the above requirements shall be eligible for certification, providing one of the following conditions exists:

(A) A graduate of a nurse-midwifery program not meeting Board of Registered Nursing standards who shows evidence satisfactory to the Board that deficiencies have been corrected in a Board approved nurse-midwifery program, or have been corrected through successful completion of specific courses which have been approved by the Board.

(B) Certification as a nurse-midwife by a national or state organization whose standards are satisfactory to the Board.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2746, 2746.2, 2746.5, Business and Professions Code.

1461. Nurse-Midwifery Committee.

The board shall appoint a committee comprised of at least one nurse-midwife and one physician, who have demonstrated familiarity with consumer needs, collegial practice and accompanied liability, and related educational standards in the delivery of maternal-child health care. This committee shall also include at least one public member and may include such other members as the board deems appropriate. The purpose of this committee is to advise the board on all matters pertaining to nurse-midwifery as established by the board, and, if necessary, to assist the board or its designated representatives in the evaluation of applications for nurse-midwifery certification.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2746.2, Business and Professions Code.

1462. Standards for Nurse-Midwifery Programs.

(a) Program of study. The program of study preparing a nurse-midwife shall:

- (1) Have as its primary purpose the preparation of nurse-midwives;
- (2) Have its philosophy clearly defined and available in written form;
- (3) Have its objectives, reflective of the philosophy, stated in behavioral terms, which describe the theoretical knowledge base and clinical competencies expected of the graduates.

(b) Curriculum.

(1) The curriculum shall be no less than twelve(12) months in length, and shall be specifically designed to provide a knowledge and skills base necessary for nurse-midwifery management of women and neonates. Such content shall include, but not be limited to, the following:

(A) Anatomy; physiology; genetics; obstetrics and gynecology; embryology and fetal development; neonatology; child growth and development; pharmacology; nutrition; laboratory and diagnostic tests and procedures; and physical assessment.

(B) Concepts in psycho-social, emotional, and cultural aspects of maternal/child care; human sexuality; counseling and teaching; maternal/infant/ family bonding process; breast feeding; family planning; principles of preventive health; and community health.

(C) All aspects of the management of normal pregnancy, labor and delivery, postpartum period, newborn care, family planning and/or routine gynecological care in alternative birth centers, homes and hospitals.

(2) The program shall provide concurrent theory and clinical practice in a setting in the United States.

(3) The program shall include the nurse-midwifery management process which includes the following steps:

(A) Obtains or updates a defined and relevant data base for assessment of the health status of the client.

(B) Identifies problems/diagnosis based upon correct interpretation of the data base.

(C) Prepares a defined needs/problem list with corroboration from the client.

(D) Consults and collaborates with and refers to, appropriate members of the health care team.

(E) Provides information to enable clients to make appropriate decisions and to assume appropriate responsibility for their own health.

(F) Assumes direct responsibility for the development of comprehensive, supportive care for the client and with the client.

(G) Assumes direct responsibility for implementing the plan of care.

(H) Initiates appropriate measures for obstetrical and neonatal emergencies.

(I) Evaluates, with corroboration from the client, the achievement of health care goals and modifies plan of care appropriately.

(4) The program shall prepare the nurse-midwife to practice as follows:

(A) Management of the normal pregnancy.

(B) Management of normal labor and delivery in all birth settings, including the following when indicated:

1. Administration of intravenous fluids, analgesics, and postpartum oxytocics.

2. Amniotome during labor.

3. Application of external or internal monitoring devices.

4. Administration of local anesthesia: paracervical blocks, pudendal blocks, and local infiltration.

5. Episiotomy.

6. Repair of episiotomies and lacerations.

7. Resuscitation of the newborn.

(C) Management of the normal postpartum period.

(D) Management of the normal newborn care.

(E) Management of family planning and/or routine gynecological care including: fitting vaginal diaphragms, insertion of intrauterine devices, selection of contraceptive agents from approved formulary.

(c) Faculty. Faculty of the nurse-midwifery educational program shall comply with the following requirements:

(1) Faculty shall include one or more nurse-midwives and one or more physicians with current training and practice in obstetrics.

(2) Faculty teaching in the program shall be current in knowledge and practice in the specialty being taught.

(3) Nurse-midwives, clinical instructors, and physicians who participate in teaching, supervising and evaluating students shall show evidence of current practice.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2746, 2746.2 and 2746.5, Business and Professions Code.

1463. Scope of Practice.

The scope of nurse-midwifery practice includes:

- (a) Providing necessary supervision, care and advice in a variety of settings to women during the antepartal, intrapartal, postpartal, interconceptional periods, and family planning needs.
- (b) Conducting deliveries on his or her own responsibility and caring for the newborn and the infant. This care includes preventive measures and the detection of abnormal conditions in mother and child.
- (c) Obtaining physician assistance and consultation when indicated.
- (d) Providing emergency care until physician assistance can be obtained.
- (e) Other practices and procedures may be included when the nurse-midwife and the supervising physician deem appropriate by using the standardized procedures as specified in Section 2725 of the Code.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2746, 2746.2 and 2746.5, Business and Professions Code.

1466. Renewal of Certificates.

Certificates to practice nurse-midwifery may be renewed biennially by application for renewal on a form provided by the board and payment of the renewal fee.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2815.5, Business and Professions Code.

Article 7. Standardized Procedure Guidelines

1470. Purpose.

The Board of Registered Nursing in conjunction with the Medical Board of California (see the regulations of the Medical Board of California, Article 9.5, Chapter 13, Title 16 of the California Code of Regulations) intends, by adopting the regulations contained in the article, to jointly promulgate guidelines for the development of standardized procedures to be used in organized health care systems which are subject to this rule. The purpose of these guidelines is:

- (a) To protect consumers by providing evidence that the nurse meets all requirements to practice safely.
- (b) To provide uniformity in development of standardized procedures.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2725 and 2811.5, Business and Professions Code.

1471. Definitions.

For purposes of this article:

- (a) "Standardized procedure functions" means those functions specified in Business and Professions Code Section 2725(c) and (d) which are to be performed according to "standardized procedures";
- (b) "Organized health care system" means a health facility which is not licensed pursuant to Chapter 2 (commencing with Section 1250), Division 2 of the Health and Safety Code and includes, but is not limited to, clinics, home health agencies, physicians' offices and public or community health services;
- (c) "Standardized procedures" means policies and protocols formulated by organized health care systems for the performance of standardized procedure functions.

1472. Standardized Procedure Functions.

An organized health care system must develop standardized procedures before permitting registered nurses to perform standardized procedure functions. A registered nurse may perform standardized procedure functions only under the conditions specified in a health care system's standardized procedures; and must provide the system with satisfactory evidence that the nurse meets its experience, training, and/or education requirements to perform such functions.

1474. Standardized Procedure Guidelines.

Following are the standardized procedure guidelines jointly promulgated by the Medical Board of California and by the Board of Registered Nursing:

- (a) Standardized procedures shall include a written description of the method used in developing and approving them and any revision thereof.
- (b) Each standardized procedure shall:
 - (1) Be in writing, dated and signed by the organized health care system personnel authorized to approve it.
 - (2) Specify which standardized procedure functions registered nurses may perform and under what circumstances.
 - (3) State any specific requirements which are to be followed by registered nurses in performing particular standardized procedure functions.

- (4) Specify any experience, training, and/or education requirements for performance of standardized procedure functions.
- (5) Establish a method for initial and continuing evaluation of the competence of those registered nurses authorized to perform standardized procedure functions.
- (6) Provide for a method of maintaining a written record of those persons authorized to perform standardized procedure functions.
- (7) Specify the scope of supervision required for performance of standardized procedure functions, for example, immediate supervision by a physician.
- (8) Set forth any specialized circumstances under which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition.
- (9) State the limitations on settings, if any, in which standardized procedure functions may be performed.
- (10) Specify patient record keeping requirements.
- (11) Provide for a method of periodic review of the standardized procedures.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2725, Business and Professions Code.

Article 8. Standards for Nurse Practitioners

1480. Definitions.

- (a) "Nurse practitioner" means a registered nurse who possesses additional preparation and skills in physical diagnosis, psycho-social assessment, and management of health-illness needs in primary health care, and who has been prepared in a program conforms to board standards as specified in Section 1484.
- (b) "Primary health care" is that which occurs when a consumer makes contact with a health care provider who assumes responsibility and accountability for the continuity of health care regardless of the presence or absence of disease.
- (c) "Clinically competent" means that one possesses and exercises the degree of learning, skill, care and experience ordinarily possessed and exercised by a member of the appropriate discipline in clinical practice.
- (d) "Holding oneself out" means to use the title of nurse-practitioner.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2834, Business and Professions Code.

1481. Categories of Nurse Practitioners.

A registered nurse who has met the requirements of Section 1482 for holding out as a nurse practitioner, may be known as a nurse practitioner and may place the letters "R.N., N.P." after his/her name alone or in combination with other letters or words identifying categories of specialization, including but not limited to the following: adult nurse practitioner, pediatric nurse practitioner, obstetrical-gynecological nurse practitioner, and family nurse practitioner.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2834 and 2836, Business and Professions Code.

1482. Requirements for Holding Out As a Nurse Practitioner.

The requirements for holding oneself out as a nurse practitioner are:

- (a) Active licensure as a registered nurse in California; and
- (b) One of the following:
 - (1) Successful completion of a program of study which conforms to board standards; or
 - (2) Certification by a national or state organization whose standards are equivalent to those set forth in Section 1484; or
 - (3) A nurse who has not completed a nurse practitioner program of study which meets board standards as specified in Section 1484, shall be able to provide:
 - (A) Documentation of remediation of areas of deficiency in course content and/or clinical experience, and
 - (B) Verification by a nurse practitioner and by a physician who meet the requirements for faculty members specified in Section 1484(c), of clinical competence in the delivery of primary health care.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2835 and 2836, Business and Professions Code.

1483. Evaluation of Credentials.

An application for evaluation of a registered nurse's qualifications to hold out as a nurse practitioner shall be filed with the board on a form prescribed by the board and shall be accompanied by the fee prescribed in Section 1417 and such evidence, statements or documents as therein required by the board to conform with Sections 1482 and 1484.

The board shall notify the applicant in writing that the application is complete and accepted for filing or that the application is deficient and what specific information is required within 30 days from the receipt of an application. A decision on the evaluation of credentials shall be reached within 60 days from the filing of a completed application. The median, minimum, and maximum times for processing an application, from the receipt of the initial application to the final decision, shall be 42 days, 14 days, and one year, respectively, taking into account Section 1410.4(e) which provides for abandonment of incomplete applications after one year.

Note: Authority cited: Section 2715 and 2718, Business and Professions Code. Reference: Sections 2815 and 2835.5, Business and Professions Code.

1484. Standards of Education.

The program of study preparing a nurse practitioner shall meet the following criteria:

(a) Purpose, Philosophy and Objectives

- (1) have as its primary purpose the preparation of registered nurses who can provide primary health care;
- (2) have a clearly defined philosophy available in written form;
- (3) have objectives which reflect the philosophy, stated in behavioral terms, describing the theoretical knowledge and clinical competencies of the graduate.

(b) Administration

- (1) Be conducted in conjunction with one of the following:

(A) An institution of higher education that offers a baccalaureate or higher degree in nursing, medicine, or public health.

(B) A general acute care hospital licensed pursuant to Chapter 2 (Section 1250) of Division 2 of the Health and Safety Code, which has an organized outpatient department.

(2) Have admission requirements and policies for withdrawal, dismissal and readmission clearly stated and available to the student in written form.

(3) Have written policies for clearly informing applicants of the academic status of the program.

(4) Provide the graduate with official evidence indicating that he/she has demonstrated clinical competence in delivering primary health care and has achieved all other objectives of the program.

(5) Maintain systematic, retrievable records of the program including philosophy, objectives, administration, faculty, curriculum, students and graduates. In case of program discontinuance, the board shall be notified of the method provided for record retrieval.

(6) Provide for program evaluation by faculty and students during and following the program and make results available for public review.

(c) Faculty. There shall be an adequate number of qualified faculty to develop and implement the program and to achieve the stated objectives.

(1) Each faculty person shall demonstrate current competence in the area in which he/she teaches.

(2) The director or co-director of the program shall:

(A) be a registered nurse;

(B) hold a Master's or higher degree in nursing or a related health field from an accredited college or university;

(C) have had one academic year's experience, within the last five (5) years, as an instructor in a school of professional nursing, or in a program preparing nurse practitioners.

(3) Faculty in the theoretical portion of the program must include instructors who hold a Master's or higher degree in the area in which he or she teaches.

(4) A clinical instructor shall hold active licensure to practice his/her respective profession and demonstrate current clinical competence.

(5) A clinical instructor shall participate in teaching, supervising and evaluating students, and shall be appropriately matched with the content and skills being taught to the students.

(d) Curriculum

(1) The program shall include all theoretical and clinical instruction necessary to enable the graduate to provide primary health care for persons for whom he/she will provide care.

(2) The program shall provide evaluation of previous education and/or experience in primary health care for the purpose of granting credit for meeting program requirements.

(3) Training for practice in an area of specialization shall be broad enough, not only to detect and control presenting symptoms, but to minimize the potential for disease progression.

(4) Curriculum, course content, and plans for clinical experience shall be developed through collaboration of the total faculty.

(5) Curriculum, course content, methods of instruction and clinical experience shall be consistent with the philosophy and objectives of the program.

(6) Outlines and descriptions of all learning experiences shall be available, in writing, prior to enrollment of students in the program.

(7) The program may be full-time or part-time and shall be comprised of not less than thirty (30) semester units, (forty-five (45) quarter units), which shall include theory and supervised clinical practice.

(8) The course of instruction shall be calculated according to the following formula:

(A) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(B) Three (3) hours of clinical practice each week throughout a semester or quarter equals one (1) unit.

(C) One (1) semester equals 16-18 weeks and one (1) quarter equals 10-12 weeks.

(9) Supervised clinical practice shall consist of two phases:

(A) Concurrent with theory, there shall be provided for the student, demonstration of and supervised practice of correlated skills in the clinical setting with patients.

(B) Following acquisition of basic theoretical knowledge prescribed by the curriculum the student shall receive supervised experience and instruction in an appropriate clinical setting.

(C) At least 12 semester units or 18 quarter units of the program shall be in clinical practice.

(10) The duration of clinical experience and the setting shall be such that the student will receive intensive experience in performing the diagnostic and treatment procedures essential to the practice for which the student is being prepared.

(11) The program shall have the responsibility for arranging for clinical instruction and supervision for the student.

(12) The curriculum shall include, but is not limited to:

(A) Normal growth and development

(B) Pathophysiology

(C) Interviewing and communication skills

(D) Eliciting, recording and maintaining a developmental health history

(E) Comprehensive physical examination

(F) Psycho-social assessment

(G) Interpretation of laboratory findings

(H) Evaluation of assessment data to define health and developmental problems

(I) Pharmacology

(J) Nutrition

(K) Disease management

(L) Principles of health maintenance

(M) Assessment of community resources

(N) Initiating and providing emergency treatments

(O) Nurse practitioner role development

(P) Legal implications of advanced practice

(Q) Health care delivery systems

(13) The course of instruction of a program conducted in a non-academic setting shall be equivalent to that conducted in an academic setting.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2836, Business and Professions Code.

1485. Scope of Practice.

Nothing in this article shall be construed to limit the current scope of practice of the registered nurse authorized pursuant to the Business and Professions Code, Division 2, Chapter 6. The nurse practitioner shall function within the scope of practice as specified in the Nursing Practice Act and as it applies to all registered nurses.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2834 and 2837, Business and Professions Code.

Article 9. Public Health Nurse

1490. Public Health Nurse Certificate.

(a) A Public Health Nurse Certificate shall be issued by the Board to a person who:

(1) Completes and submits an application pursuant to Section 1492; and

(2) Meets the qualifications and requirements specified in Section 1491.

(b) A Public Health Nurse Certificate shall remain valid as long as the person's license to practice as a registered nurse in California is active.

(c) The Board may issue a duplicate certificate to a person who states in writing that his or her certificate has been lost, stolen or destroyed.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2818, Business and Professions Code.

1491. Qualifications and Requirements.

An applicant for a Public Health Nurse Certificate shall have a license, in active status, to practice as a registered nurse in California and shall have met the education and training requirements as follows:

- (1) Possession of a baccalaureate degree in nursing from a nursing school accredited by the National League for Nursing Accrediting Commission, the Commission on Collegiate Nursing Education, or any other accrediting body approved by the Board. This baccalaureate program must have included coursework in public health nursing; or
- (2) Possession of a baccalaureate degree from a nursing school which is not accredited by the National League for Nursing Accrediting Commission, the Commission on Collegiate Nursing Education, or any other accrediting body approved by the Board if the Board determines that the nursing school coursework and experience is equivalent to that of a nursing school accredited by the National League for Nursing Accrediting Commission, the Commission on Collegiate Nursing Education, or any other accrediting body approved by the Board; or
- (3) Possession of a baccalaureate degree in a field other than nursing and completion of a [Board approved](#) specialized public health nursing program associated with a baccalaureate school of nursing accredited by the National League for Nursing Accrediting Commission, the Commission on Collegiate Nursing Education, or any other accrediting body approved by the Board.
- (4) Training in the prevention, early detection, intervention, California reporting requirements, and treatment of child neglect and abuse that shall be at least seven (7) hours in length and shall be acquired through:
 - (A) A baccalaureate or specialized program in nursing; or
 - (B) A course of instruction in the prevention, early detection, intervention, California reporting requirements, and treatment of child neglect and abuse that offered by a continuing education provider approved by the Board.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: 2817 and 2818, Business and Professions Code.

1492. Application for Public Health Nurse Certificate.

- (a) A person seeking a Public Health Nurse Certificate shall complete and submit an application on the forms prescribed by the Board and shall submit a nonrefundable fee as prescribed by Section 1417 to the Board of Registered Nursing.
- (b) Receipt of an application, information, documents, or fees supporting an application shall be deemed to occur on the date the application, information, documents, or fees are received by the Board.
- (c) An application shall be considered complete when all required documents, information, and fees have been received by the Board.
- (d) The applicant shall sign a statement contained on the application form prescribed by the Board that certifies under penalty of perjury pursuant to the laws of the State of California that the information contained in the application is true and correct.

Note: Authority cited: Sections 2715 and 2816, Business and Professions Code. Reference: Section 2816, Business and Professions Code.

1493. Issuance of Application.

- (a) The Board shall provide written notification to the applicant within 30 calendar days of receipt of an application and fee for a Public Health Nurse Certificate that:
 - (1) The application is complete and accepted for processing; or
 - (2) The application is deficient and what specific information, documentation, or fee is required to complete the application.
- (b) The Board's time periods for processing an initial application for Public Health Nurse Certificate are as follows:
 - (1) The median time for processing an initial application is 42 calendar days.
 - (2) The minimum time for processing an initial application is 14 calendar days.
 - (3) The maximum time for processing an initial application is 365 calendar days.
- (c) Written notification by the Board shall be deemed to have occurred on the date such notification is deposited in the U.S. mail.
- (d) If an applicant fails to respond within a period of one year to a written request by the Board for additional information, documentation, or fees, the application shall be deemed to have been abandoned by the applicant.
- (e) An applicant whose application was deemed abandoned pursuant to subdivision (d) may reapply by submitting a complete new application, fee, and documentation to meet all current requirements.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2818, Business and Professions Code.

BUSINESS AND PROFESSIONS CODE

GENERAL PROVISIONS

7.5 Conviction Defined

A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(Added by Stats. 1979, c. 876, p. 3057, § 1.)

12.5 Authority to Issue Citation for Violation of Code to Include Authority to Issue Citation for Violation of Regulation

Whenever in any provision of this code authority is granted to issue a citation for a violation of any provision of this code, that authority also includes the authority to issue a citation for the violation of any regulation adopted pursuant to any provision of this code.

(Added by Stats. 1986, c. 1379, § 1.)

14.1 Man or Men as Person or Persons

The Legislature hereby declares its intent that the terms "man" or "men" where appropriate shall be deemed "person" or "persons" and any references to the terms "man" or "men" in sections of this code be changed to "person" or "persons" when such code sections are being amended for any purpose. This act is declaratory and not amendatory of existing law.

22. Board

(a) "Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) Whenever the regulatory program of a board that is subject to review by the Joint Legislative Sunset Review Committee, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a "bureau."

(Amended by Stats. 1991, c. 654 (A.B. 1893), § 1.)

23.6 Appointing Power

"Appointing power," unless otherwise defined, refers to the Director of Consumer Affairs.

29.5 Compliance with Support Orders; License Qualifications

In addition to other qualifications for licensure prescribed by the various acts of boards under the department, applicants for licensure and licensees renewing their licenses shall also comply with Section 11350.6 of the Welfare and Institutions Code.

(Added by Stats. 1991, c. 542 (SB 1161), § 1.)

30. Tax Enforcement; Furnishing of Federal Employer Identification Number, Social Security Number and Other Information; Penalty; Filing Reported Information; Confidentiality; Legislative Intent

(a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance or renewal of the license require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

- (1) Name.
- (2) Address or addresses of record.
- (3) Federal employer identification number if the entity is a partnership or social security number for all others.
- (4) Type of license.
- (5) Effective date of license or a renewal.
- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(Amended by Stats. 1991, c. 542 (SB 1161), § 2; Stats. 1991, c. 654 (AB 1893), § 1.5.; Stats. 1994, c. 1135 (AB 3302), § 1; Stats. 1997, c. 17 (SB 947), § 1; Stats. 1997, c. 604 (SB 1106), § 1, eff. Oct. 3, 1997; Stats. 1997, c. 605 (AB 1040), § 1.)

31. Licensees Not in Compliance with a Judgment or Order for Support; Enforcement of Obligation

(a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 11350.6 of the Welfare and Institutions Code.

(c) "Compliance with a judgment or order for support," has the meaning given in paragraph (4) of subdivision (a) of Section 11350.6 of the Welfare and Institutions Code.

(Added by Stats. 1991, c. 110 (SB 101), § 3. Amended by Stats. 1991, c. 542 (SB 1161), § 3.)

32. Legislative Findings; AIDS Training in continuing Education Requirements for Specified Licensees

(a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune deficiency syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered nurses, licensed vocational nurses, psychologists, physician assistants, respiratory therapists, acupuncturists, marriage, family, and child counselors, licensed educational psychologists, and clinical social workers.

(Amended by Stats. 1994, c. 26 (AB 1807), § 2, eff. March 30, 1994.)

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS

CHAPTER 1. THE DEPARTMENT

100. Existence of Department

There is in the state government, in the State and Consumer Services Agency, a Department of Consumer Affairs.

(Amended by Stats. 1984, c. 144, § 1.)

101.1. Review of Consumer-Related Boards and Categories of Licensed Professionals; Inoperative and Repealed Boards; Responsibilities and Jurisdiction

(a) It is the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review every four years to evaluate and determine whether each board has demonstrated a public need for the continued existence of that board in accordance with enumerated factors and standards as set forth in Division 1.2 (commencing with Section 473).

(b)(1) In the event that any board, as defined in Section 477, becomes inoperative and is repealed in accordance with the act that added this section, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction of that board and its executive officer.

(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department.

(3) Notwithstanding Section 107, any provision of law authorizing the appointment of an executive officer by a board subject to the review described in Division 1.2 (commencing with Section 473), or prescribing his or her duties, shall not be implemented and shall have no force or effect while the applicable board is inoperative or repealed. Any reference to the executive officer of an inoperative or repealed board shall be deemed to be a reference to the director or his or her designee.

(c) It is the intent of the Legislature that subsequent legislation to extend or repeal the inoperative date for any board shall be a separate bill for that purpose.

(Added by Stats. 1994, c. 908 (SB 2036), § 2.)

101.6. Purpose of Boards, Bureaus and Commissions; General Duties and Powers

The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California.

To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

(Added by Stats. 1980, c. 375, p. 748, § 1.)

103. Compensation and Expenses of Board, Commission or Committee Members

Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

(Amended by Stats. 1993, c. 1264 (SB 574), § 1.)

104. Health-related Boards or Regulatory Entities; Regulations Regarding Display of Licensees and Provision of Information

All boards or other regulatory entities within the department's jurisdiction that the department determines to be health-related may adopt regulations to require licensees to display their licenses or registrations in the locality in which they are treating patients, and to inform patients as to the identity of the regulatory agency they may contact if they have any questions or complaints regarding the licensee. In complying with this requirement, those boards may take into consideration the particular settings in which licensees practice, or other circumstances which may make the displaying or providing of information to the consumer extremely difficult for the licensee in their particular type of practice.

(Added by Stats. 1998, c. 991 (SB 1980), § 1.)

105.5. Duration of Appointment to Fill Vacancy

Notwithstanding any other provision of this code, each member of a board, commission, examining committee, or other similarly constituted agency within the department shall hold office until the appointment and qualification of his successor or until one year shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

106. Removal of Board Members

The Governor has power to remove from office at any time, any member of any board appointed by him for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the Governor, conferred on him by any other provision of law, to remove any member of any board.

106.5. Removal of Board Members; Disclosure of Examination Questions; Law Governing

Notwithstanding any other provision of law, the Governor may remove from office a member of a board or other licensing entity in the department if it is shown that such member has knowledge of the specific questions to be asked on the licensing entity's next examination and directly or indirectly discloses any such question or questions in advance of or during the examination to any applicant for that examination.

The proceedings for removal shall be conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the Governor shall have all the powers granted therein.

107. Appointment of Executive Officer

Pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution, each board may appoint a person exempt from civil service and may fix his or her salary, with the approval of the Department of Personnel Administration pursuant to Section 19825 of the Government Code, who shall be designated as an executive officer unless the licensing act of the particular board designates the person as a registrar.

(Amended by Stats. 1987, c. 850, § 2.)

107.5. Official Seal; Form and Contents

If any board in the department uses an official seal pursuant to any provision of this code, the seal shall contain the words "State of California" and "Department of Consumer Affairs" in addition to the title of the board, and shall be in a form approved by the director.

108. Functions of Boards

Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board.

108.5. Witness Fees and Expenses

In any investigation, proceeding or hearing which any board, commission or officer in the department is empowered to institute, conduct, or hold, any witness appearing at such investigation, proceeding or hearing whether upon a subpoena or voluntarily, may be paid the sum of twelve dollars (\$12) per day for every day in actual attendance at such investigation, proceeding or hearing and for his actual, necessary and reasonable expenses and such sums shall be a legal charge against the funds of the respective board, commission or officer; provided further, that no witness appearing other than at the instance of the board, commission or officer may be compensated out of such fund.

The board, commission or officer will determine the sums due any such witness and enter the amount on its minutes.

109. Finality of Decisions

(a) The decisions of any of the boards comprising the department with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, are not subject to review by the director, but are final within the limits provided by this code which are applicable to the particular board, except as provided in this section.

(b) The director may initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of an examination which is administered by a board, or in the review of qualifications which are a part of the licensing process of any board. A request for investigation shall be made by the director to the Division of Investigation through the chief of the division or to any law enforcement agency in the jurisdiction where the alleged misconduct occurred.

(c) The director may intervene in any matter of any board where an investigation by the Division of Investigation discloses probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a violation of criminal law.

(d) The term "intervene," as used in paragraph (c) of this section may include, but is not limited to, an application for a restraining order or injunctive relief as specified in Section 123.5, or a referral or request for criminal prosecution. For purposes of this section, the director shall be deemed to have standing under Section 123.5 and shall seek representation of the Attorney General, or other appropriate counsel in the event of a conflict in pursuing that action.

(Amended by Stats. 1991, c. 1013 (SB 961), § 1.)

110. Records and Other Property; Examination Questions

The department shall have possession and control of all records, books, papers, offices, equipment, supplies, funds, appropriations, land and other property--real or personal--now or hereafter held for the benefit or use of all of the bodies, offices or officers comprising the department. The title to all property held by any of these bodies, offices or officers for the use and benefit of the state, is vested in the State of California to be held in the possession of the department. Except as authorized by a board, the department shall not have the possession and control of examination questions prior to submission to applicants at scheduled examinations.

(Amended by Stats. 1996, c. 829 (AB 3473), § 1.)

111. Commissioners on Examination

Unless otherwise expressly provided, any board may, with the approval of the appointing power, appoint qualified persons, who shall be designated as commissioners on examination, to give the whole or any portion of any examination. A commissioner on examination need not be a member of the board but he shall have the same qualifications as one and shall be subject to the same rules.

112. Directory of Certificate Holders or Licensees

Notwithstanding any other provision of this code, no agency in the department, with the exception of the Board for Professional Engineers and Land Surveyors, shall be required to compile, publish, sell, or otherwise distribute a directory. When an agency deems it necessary to compile and publish a directory, such agency shall cooperate with the director in

determining its form and content, the time and frequency of its publication, the persons to whom it is to be sold or otherwise distributed, and its price if it is sold. Any agency that requires the approval of the director for the compilation, publication, or distribution of a directory, under the law in effect at the time the amendment made to this section at the 1970 Regular Session of the Legislature becomes effective, shall continue to require that approval. As used in this section, "directory" means a directory, roster, register, or similar compilation of the names of persons who hold a license, certificate, permit, registration, or similar indicia of authority from the agency.

(Amended by Stats. 1998, c.59 (AB 969), § 3.)

113. Conferences; Expenses

Upon recommendation of the director, officers and employees of the department, and officers, members, and employees of the boards and commissions comprising it or subject to its jurisdiction may confer, in this State or elsewhere, with officers or employees of this State, its political subdivisions, other States, or the United States, or with such other persons, associations or organizations as may be of assistance to the department, board or commission in the conduct of its work. The officers, members and employees shall be entitled to their actual traveling expenses incurred in pursuance hereof, but when such expenses are incurred with respect to travel outside of the State, they shall be subject to the approval of the Governor and the Director of Finance.

114. License or Registration Expiring During War; Reinstatement in General

(a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department, who permitted his license or registration to expire while serving in any branch of the armed services of the United States during a period of war as defined in Section 114.5 of this code may, upon application, reinstate his license or registration without examination or penalty; provided,

(1) His license or registration was valid at the time he entered the armed services.

(2) That application for reinstatement is made while serving in the armed services, or not later than one year from the date of discharge from active service or return to inactive military status.

(3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service, or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.

(b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing agency, may be required to pass an examination.

(c) Unless otherwise specifically provided in this code, any licensee or registrant who, either part time or full time, practices in this State the profession or vocation for which he is licensed or registered shall be required to maintain his license in good standing even though he is in military service.

For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which he is prevented from practicing his profession or vocation shall be excluded from said period of one year.

(Added by Stats. 1951, c. 185, p. 435, § 2. Amended by Stats. 1953, c. 423, p. 1672, § 1; Stats. 1961, c. 1253, p. 3021, § 1.)

114.5. License or Registration Expiring During War; War Defined

As used in Section 114 of this code, "war" means:

(a) Whenever Congress has declared war and peace has not formally been restored.

(b) Whenever the United States is engaged in active military operations against any foreign power, whether or not war has formally been declared.

(c) Whenever the United States is assisting the United Nations, in actions involving the use of armed force, to restore international peace and security.

(Added by Stats. 1953, c. 423, p. 1673, § 2.)

115. License or Registration Expiring During War; License or Registration Obtained While in Armed Services

The provisions of Section 114 of this code are also applicable to a licensee or registrant whose license or registration was obtained while in the armed services.

(Added by Stats. 1951, c. 1577, p. 3577, § 1.)

116. Disciplinary Matters; Audit and Review

(a) The director may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the

allied health professional boards, and the California Board of Podiatric Medicine. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually, commencing March 1, 1995, regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

(Added by Stats. 1993, c. 1267 (SB 916), § 1.)

118. Withdrawal of Application for License; Suspension, Expiration or Forfeiture of License; Authority of Board

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

119. License Offenses

Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(Amended by Stats. 1990, c. 350 (SB 2084), § 1; Stats. 1990, c. 1207 (AB 3242), § 1; Stats. 1994, c. 1206 (SB 1775), § 1.)

121. License Offenses; Legality of Practice Between Renewal and Receipt of License

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

(Added by Stats. 1979, c. 77, p. 186, § 1.)

122. Copies of Licensure; Fees

Except as otherwise provided by law, the department and each of the boards, bureaus, committees, and commissions within the department may charge a fee for the processing and issuance of a duplicate copy of any certificate of licensure or other form evidencing licensure or renewal of licensure. The fee shall be in an amount sufficient to cover all costs incident to the issuance of the duplicate certificate or other form but shall not exceed twenty-five dollars (\$25).

(Added by Stats. 1986, c. 951, § 1.)

123. Subversion of Licensing Examinations or Administration of Examinations; Conduct Constituting Violation; Penalty

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Amended by Stats. 1991, c. 647 (SB 879), § 1.)

123.5 Engagement in Practices Constituting a Violation Under § 123; Injunction or Restraining Order

Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Section 123, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of a board, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

(Formerly § 497, added by Stats. 1983, c. 95, § 2. Renumbered § 123.5 and amended by Stats. 1989, c. 1022, § 4.)

124. Manner of Giving Written Notice

Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), or Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licensee or by personal service, at the option of the board.

(Amended by Stats. 1994, c. 26 (AB 1807), § 4, eff. March 30, 1994; Stats. 1995, c. 938 (SB 523), § 1, operative July 1, 1997.)

125. Conspiracy with Unlicensed Person; Violations; Offense; Prohibited Practices

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

(a) Allows his or her license to be used by that person.

(b) Acts as his or her agent or partner.

(Amended by Stats. 1994, c. 1206 (SB1775), § 2.)

125.3. Investigation and Enforcement Costs; Payment by Licensee

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(Added By Stats. 1992, c. 1059 (AB 3745), § 1; Stats. 1992, c. 1289 (AB 2743), § 1.)

125.5. Injunction; Law Governing Restitution; Reimbursement of Board Expenses

(a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. As used in this section, "board" includes commission, bureau, division, agency and a medical quality review committee.

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

(Amended by Stats. 1982, c. 517, p. 2301, § 1.)

125.6. Refusal to Perform Licensed Activity; Aiding or Inciting Refusal of Performance by Another Licensee; Discrimination or Restriction in Performance; Race, Color, Sex, Religion, Ancestry, Disability, Marital Status or National Origin

Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance

of the licensed activity. Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

- (a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.
- (b) A record of such an impairment.
- (c) Being regarded as having such an impairment.

(Amended by Stats. 1992, c. 913 (AB 1077), § 2.)

125.7. Temporary Restraining Order or Other Appropriate Order; Petition; Affidavits; Notice; Accusation; Hearing; Review

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act that constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2 (commencing with Section 500), may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code or, in the case of a licensee of the State Department of Health Services, with that department, pursuant to Section 100171 of the Health and Safety Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; . However, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date the decision is received from the administrative law judge, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

(Amended by Stats. 1982, c. 517, p. 2302, § 2; Stats. 1994, c. 1206 (SB 1775), § 3; Stats. 1997, c. 220 (SB 68), § 1, eff. Aug. 4, 1997; Stats. 1998, c. 878 (SB2239), § 1.5.)

125.8. Temporary Restraining or Other Appropriate Order Restraining Licensee; Law Governing; Accusation; Dissolution of Order

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3

(commencing with Section 19000) of Division 8 has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he is licensed.

(b) Such order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board must provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at such time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(Amended by Stats. 1982, c. 517, p. 2303, § 3.)

125.9. Citation Issuance System; Establishment; Mandatory and Permissive Provisions; Fines

(a) Except with respect to persons regulated under Chapter 8 (commencing with Section 6850), Chapter 11 (commencing with Section 7500), Chapter 11.5 (commencing with Section 7512), and Chapter 11.6 (commencing with Section 7590) of Division 3, or a person holding a license specified in paragraph (1), (6), or (7) of subdivision (b) of Section 9941, any board, bureau, or commission within the department may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Where appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed two thousand five hundred dollars (\$2,500) for each inspection or each investigation made with respect to the violation, or two thousand five hundred dollars (\$2,500) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

(Amended by Stats. 1991, c. 521 (SB 650), § 1; Stats. 1995, c. 381 (AB 910), § 4, eff. Aug. 5, 1995; Stats. 1995, c. 708 (SB 609), § 1.)

126. Reports to Governor; Exemption

Notwithstanding any other provision of this code, any board, commission, examining committee, or other similarly constituted agency within the department required prior to the effective date of this section to submit reports to the Governor under any provision of this code shall not be required to submit such reports.

127. Reports to Director

Notwithstanding any other provision of this code, the director may require such reports from any board, commission, examining committee, or other similarly constituted agency within the department as he deems reasonably necessary on any phase of their operations.

128. Unlawful Sale of Equipment, Supplies and Services

Notwithstanding any other provision of law, it is a misdemeanor to sell equipment, supplies, or services to any person with knowledge that the equipment, supplies, or services are to be used in the performance of a service or contract in violation of the licensing requirements of this code.

The provisions of this section shall not be applicable to cash sales of less than one hundred dollars (\$100).

For the purposes of this section, "person" includes, but is not limited to, a company, partnership, limited liability company, firm, or corporation.

For the purposes of this section, "license" includes certificate or registration.

A violation of this section shall be punishable by a fine of not less than one thousand dollars (\$1,000) and by imprisonment in the county jail not exceeding six months.

(Amended by Stats. 1994, c. 1010 (SB 2053), § 1.)

128.5. Agency with Unencumbered Funds; Reduction of License or Other Fees

(a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Board of Architectural Examiners, the Board of Behavioral Science Examiners, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric, or the Bureau of Security and Investigative Services has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(Amended by Stats. 1994, c. 26 (AB 1807), § 5, eff. March 30, 1994; Stats. 1995, c. 60 (SB 42), 2, eff. July 6, 1995; Stats. 1997, c. 759 (SB 827), § 2.)

129. Complaints About Licentiates; Notification of Action taken to Complainant; Relief Authorized; Reports

(a) As used in this section, "board" means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.

(b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective

means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.

(c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licensee in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licensee.

(d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board's functions and responsibilities under this section.

(e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

130. Term of Office; Expiration

(a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

- (1) Medical Board of California.
- (2) California Board of Podiatric Medicine.
- (3) Physical Therapy Board.
- (4) Board of Registered Nursing.
- (5) Board of Vocational Nursing and Psychiatric Technicians.
- (6) State Board of Optometry.
- (7) California State Board of Pharmacy.
- (8) Veterinary Medical Board.
- (9) California Board of Architectural Examiners.
- (10) Landscape Architects' Technical Committee.
- (11) State Board of Barbering and Cosmetology.
- (12) Board for Professional Engineers and Land Surveyors.
- (13) Contractors' State License Board.
- (14) State Board of Guide Dogs for the Blind.
- (15) State Board of Funeral Directors and Embalmers.
- (16) Board of Behavioral Science Examiners.
- (17) Structural Pest Control Board.
- (18) Cemetery Board.
- (19) Bureau of Electronic and Appliance Repair Advisory Board.
- (20) Court Reporters Board of California.
- (21) State Board of Registration for Geologists and Geophysicists.
- (22) State Athletic Commission.
- (23) Osteopathic Medical Board of California.
- (24) The Respiratory Care Board of California.
- (25) The Acupuncture Committee.
- (26) The Board of Psychology.

(Amended by Stats. 1994, Ch. 26 (AB 1807), § 6, eff. March 30, 1994; Stats. 1994, c. 1274 (SB 2039), § 1.3; Stats. 1995, c. 60 (SB 42), § 3, eff. July 6, 1995; Stats. 1997, c. 759 (SB 827), § 3; Stats. 1998, c. 59 (AB 969), § 4; Stats. 1998, c. 970 (AB 2802), § 1; Stats. 1998, c. 971 (AB 2721), § 1.)

131. Consecutive Terms; Limit

Notwithstanding any other provision of law, no member of an agency designated in subdivision (b) of Section 130 or member of a board, commission, committee, or similarly constituted agency in the department shall serve more than two consecutive full terms.

(Amended by Stats. 1987, c. 850, § 5.)

132. Actions Against Other Agencies; Request to Director

No board, commission, examining committee, or any other agency within the department may institute or join any legal action against any other agency within the state or federal government without the permission of the director.

Prior to instituting or joining in a legal action against an agency of the state or federal government, a board, commission, examining committee, or any other agency within the department shall present a written request to the director to do so.

Within 30 days of receipt of the request, the director shall communicate his or her approval or denial of the request and his or her reasons for approval or denial to the requesting agency in writing. If the director does not act within 30 days, the request shall be deemed approved.

A requesting agency within the department may override the director's denial of its request to institute or join a legal action against a state or federal agency by a two-thirds vote of the members of the board, commission, examining committee, or other agency, which vote shall include the vote of at least one public member of that board, commission, examining committee, or other agency.

(Added by Stats. 1990, c. 285 (AB 2984), § 1.)

134. License Fees; Proration

When the term of any license issued by any agency in the department exceeds one year, initial license fees for licenses which are issued during a current license term shall be prorated on a yearly basis.

135. Failure on Prior Examinations; Limitations, Restrictions, etc. on Subsequent Examinations; Reexamination; Time; Regular Fees and Requirements

No agency in the department shall, on the basis of an applicant's failure to successfully complete prior examinations, impose any additional limitations, restrictions, prerequisites, or requirements on any applicant who wishes to participate in subsequent examinations except that any examining agency which allows an applicant conditional credit for successfully completing a divisible part of an examination may require that an applicant be reexamined in those parts successfully completed if such applicant has not successfully completed all parts of the examination within a required period of time established by the examining agency. Nothing in this section, however, requires the exemption of such applicant from the regular fees and requirements normally associated with examinations.

136. Notice of Change in Mailing Address

(a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.

(b) Except as otherwise provided by law, failure of a licentiate to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

(Added by Stats. 1994, c. 26 (AB 1807), § 7, eff. March 30, 1994.)

137. License Numbers; Inclusion in Advertising, Solicitation and Presentments; Advertising, etc., by Person Other Than Licensee; Liability

Any agency within the department may promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.

However, nothing in this section shall be construed to authorize regulation of any person not a licensee who engages in advertising, solicitation, or who makes any other presentment to the public on behalf of a licensee. Such a person shall incur no liability pursuant to this section for communicating in any advertising, soliciting, or other presentment to the public a licensee's license number exactly as provided to him by the licensee or for failure to communicate such number if none is provided to him by the licensee.

(Added by Stats. 1974, c. 743, p. 1642, § 3.)

138. Requirement That Licentiates Provide Notice Of Licensing To Clients Or Customers; Regulations; Periodic Evaluation Of Licensing Examination

(a) Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

(b) Every board, as defined in Section 22, shall submit to the director on or before December 31, 1999, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the

examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; and (3) an assessment of the appropriateness of prerequisites for admittance to the examination. The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of the board, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(c) The evaluation may be conducted by the board, or pursuant to a contract with a qualified private testing firm. A board that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an occupational analysis or item analysis conducted by that entity.

(Added by Stats. 1998, c. 879 (SB 2238), § 1.)

140. Failure to Record and Preserve Cash Transactions Involving Wages; Disciplinary Action; Costs

Any board, as defined in Section 22, which is authorized under this code to take disciplinary action against a person who holds a license may take disciplinary action upon the ground that the licensee has failed to record and preserve for not less than three years, any and all cash transactions involved in the payment of employee wages by a licensee. Failure to make these records available to an authorized representative of the board may be made grounds for disciplinary action. In any action brought and sustained by the board which involves a violation of this section and any regulation adopted thereto, the board may assess the licensee with the actual investigative costs incurred, not to exceed two thousand five hundred dollars (\$2,500). Failure to pay those costs may result in revocation of the license. Any moneys collected pursuant to this section shall be deposited in the respective fund of the board.

(Added by Stats. 1984, c. 1490, § 2, eff. Sept. 27, 1984.)

143. Action for Collection of Compensation on Contract; Proof of Licensure; Substantial Compliance; Application

(a) No person engaged in any business or profession for which a license is required under this code governing the department or any board, bureau, commission, committee, or program within the department, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required without alleging and proving that he or she was duly licensed at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.

(b) The judicial doctrine of substantial compliance shall not apply to this section.

(c) This section shall not apply to an act or contract that is considered to qualify as lawful practice of a licensed occupation or profession pursuant to Section 121.

(Added by Stats. 1990, c. 1207 (AB 3242), § 1.5.)

144. Criminal History Record Checks; Fingerprints; Boards and Committees to Which Section Applies.

(a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:

- (1) Board of Accountancy.
- (2) State Athletic Commission
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California
- (5) State Board of Guide Dogs for the Blind
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Registered Veterinary Technician Examining Committee.
- (10) Board of Vocational Nursing and Psychiatric Technicians.
- (11) Respiratory Care Board.
- (12) Hearing Aid Dispensers Examining Committee.
- (13) Physical Therapy Board of California.
- (14) Physician Assistant Examining Committee.
- (15) Speech-Language Pathology and Audiology Examining Committee.
- (16) Medical Board of California.
- (17) Board of Nursing Home Administrators.

- (18) Board of Optometry.
- (19) Acupuncture Committee.
- (20) Cemetery and Funeral Programs.
- (21) Bureau of Security and Investigative Services.
- (22) Division of Investigation.
- (23) Board of Psychology.

(Added by Stats. 1997, c. 758 (SB 1346), § 2.)

145. Legislative Findings and Declaration

The Legislature finds and declares that:

(a) Unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of California.

(b) The law enforcement agencies of the state should have sufficient, effective, and responsible means available to enforce the licensing laws of the state.

(c) The criminal sanction for unlicensed activity should be swift, effective, appropriate, and create a strong incentive to obtain a license.

(Added Stats. 1992, c. 1135 (SB 2044), § 2.)

146. Licensing, Certification or Authorization Provisions; Violations; Penalty for Infraction

(a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) or (d) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor, or

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivisions (c) and (d) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

- (1) Sections 2052 and 2054.
- (2) Section 2630.
- (3) Section 2903.
- (4) Sections 3760 and 3761.
- (5) Section 4080.
- (6) Section 4825.
- (7) Section 4935.
- (8) Section 4980.
- (9) Section 4996.
- (10) Section 5536.
- (11) Section 6704.
- (12) Section 6980.10.
- (13) Section 7317.
- (14) Section 7502 or 7592.
- (15) Section 7520.
- (16) Section 7617 or 7641.
- (17) Subdivision (a) of Section 7872.
- (18) Section 8016.
- (19) Section 8505.
- (20) Section 8725.
- (21) Section 9681.
- (22) Section 9840.
- (23) Section 9884.6.
- (24) Subdivision (c) of Section 9891.24.
- (25) Section 19049.

(d) Institutions that are required to register with the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code.

(e) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c) or (d), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

(Amended by Stats. 1994, c. 26 (AB 1807), §8, eff. March 30, 1994; Stats. 1997, c. 78 (AB 71), § 2.)

146.5. Statutes Requiring Registration, Licensure, Certification, or Other Authorization to Engage in Business or Profession; Violations as Infraction; Punishment

(a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following occur:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

- (1) Section 2630.
- (2) Section 2903.
- (3) Sections 3760 and 3761.
- (4) Section 4825.
- (5) Section 4980.
- (6) Section 4996.
- (7) Section 5536.
- (8) Section 6704.
- (9) Section 6980.10.
- (10) Section 7317.
- (11) Section 7502 or 7592.
- (12) Section 7617 or 7641.
- (13) Subdivision (a) of Section 7872.
- (14) Section 8016.
- (15) Section 8505.
- (16) Section 8725.
- (17) Section 9681.
- (18) Section 9840.
- (19) Section 9855.1.
- (20) Section 9884.6.
- (21) Subdivision (c) of Section 9891.24.
- (22) Section 19049.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

(Added by Stats. 1993, c. 1265 (SB 798), § 1. Amended by Stats. 1997, c. 401 (SB 780), § 1.)

Repeal

This section is repealed by its own terms on Jan. 1, 2003.

147. Notice to Appear for Infraction Violation; Immunity of Person Issuing Notice

(a) Any employee designated by the director shall have the authority to issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. Employees so designated are not peace officers and are not entitled to safety member retirement benefits, as a result of such designation. The

employee's authority is limited to the issuance of written notices to appear for infraction violations of provisions of this code and only when the violation is committed in the presence of the employee.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the person, at the time of such arrest, had reasonable cause to believe was lawful.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.)

148. Administrative Citations for License Violations; Use of Additional Enforcement Statutes

Any board, bureau, or commission within the department may, in addition to the administrative citation system authorized by Section 125.9, also establish, by regulation, a similar system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. The administrative citation system authorized by this section shall meet the requirements of Section 125.9 and may not be applied to an unlicensed person who is otherwise exempted from the provisions of the applicable licensing act. The establishment of an administrative citation system for unlicensed activity does not preclude the use of other enforcement statutes for unlicensed activities at the discretion of the board, bureau, or commission.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.)

149. Telephone Directory Advertisement by Persons Without Proper License or Registration; Citation and Order of Correction

(a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

- (1) Cease the unlawful advertising.
- (2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

- (1) The State Board of Barbering and Cosmetology.
- (2) The State Board of Funeral Directors and Embalmers.
- (3) The Veterinary Medical Board.
- (4) The Hearing Aid Dispensers Examining Committee.
- (5) The State Board of Landscape Architects.
- (6) The California Board of Podiatric Medicine.
- (7) The Respiratory Care Board of California.
- (8) The Bureau of Home Furnishings and Thermal Insulation.
- (9) The Bureau of Security and Investigative Services.
- (10) The Bureau of Electronic and Appliance Repair.
- (11) The Bureau of Automotive Repair.
- (12) The Tax Preparers Program.
- (13) The California Board of Architectural Examiners.
- (14) The Speech-Language Pathology and Audiology Examining Committee.
- (15) The Board for Professional Engineers and Land Surveyors.
- (16) The Board of Behavioral Science Examiners.
- (17) The State Board of Registration for Geologists and Geophysicists.
- (18) The Structural Pest Control Board.
- (19) The Acupuncture Examining Committee.

(20) The Board of Psychology.

(21) The State Board of Accountancy.

(Amended by Stats. 1994, c. 26 (AB 1807), § 9, eff. March 30, 1994; Stats. 1994, c. 1274 (SB 2039), § 1.5; Stats. 1995, c. 60 (SB 42), § 4, eff. July 6, 1995; Stats. 1998, c. 59 (AB 969), § 5.)

CHAPTER 2. THE DIRECTOR OF CONSUMER AFFAIRS

150. Director; Civil Executive Officer; Control

The department is under the control of a civil executive officer who is known as the Director of Consumer Affairs.

151. Appointment; Tenure; Compensation; Traveling Expenses

The director is appointed by the Governor and holds office at the Governor's pleasure. The director shall receive the annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code, and his or her necessary traveling expenses.

(Amended by Stats. 1985, c. 106, § 1.)

152. Organization of Department

For the purpose of administration, the reregistration and clerical work of the department is organized by the director, subject to the approval of the Governor, in such manner as he deems necessary properly to segregate and conduct the work of the department.

152.5. Extension of License, Certificate or Permit Renewal Dates

For purposes of distributing the reregistration work of the department uniformly throughout the year as nearly as practicable, the boards in the department may, with the approval of the director, extend by not more than six months the date fixed by law for the renewal of any license, certificate or permit issued by them, except that in such event any renewal fee which may be involved shall be prorated in such manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

152.6. Spreading Renewal Dates

Notwithstanding any other provision of this code, each board within the department shall, in cooperation with the director, establish such license periods and renewal dates for all licenses in such manner as best to distribute the renewal work of all boards throughout each year and permit the most efficient, and economical use of personnel and equipment. To the extent practicable, provision shall be made for the proration or other adjustment of fees in such manner that no person shall be required to pay a greater or lesser fee than he would have been required to pay if the change in license periods or renewal dates had not occurred.

As used in this section "license" includes "certificate," "permit," "authority," "registration," and similar indicia of authority to engage in a business or profession, and "board" includes "board," "commission," "committee," and an individual who is authorized to renew a license.

153. Investigation

The director may investigate the work of the several boards in his department and may obtain a copy of all records and full and complete data in all official matters in possession of the boards, their members, officers, or employees, other than examination questions prior to submission to applicants at scheduled examinations.

154. Personnel in General

Any and all matters relating to employment, tenure or discipline of employees of any board, agency or commission, shall be initiated by said board, agency or commission, but all such actions shall, before reference to the State Personnel Board, receive the approval of the appointing power.

To effect the purposes of Division 1 of this code and each agency of the department, employment of all personnel shall be in accord with Article XXIV of the Constitution, the law and rules and regulations of the State Personnel Board. Each board, agency or commission, shall select its employees from a list of eligibles obtained by the appointing power from the State Personnel Board. The person selected by the board, agency or commission to fill any position or vacancy shall thereafter be reported by the board, agency or commission, to the appointing power.

154.5. Employee of Board Providing Expertise in Evaluating Applicants or Conduct of Licensees, Named as Defendants in Civil Action; Legal Representation Provided by Board, Nonliability of Board for Judgment; Utilization of Attorney General

If a person, not a regular employee of a board under this code, including the Board of Chiropractic Examiners and the Osteopathic Medical Board of California, is hired or under contract to provide expertise to the board in the evaluation of an applicant or the conduct of a licensee, and that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall not be liable for any judgment rendered against the person. The Attorney General shall be utilized in the action and his or her services shall be a charge against the board.

(Amended by Stats. 1991, c. 359 (AB 1332), § 3.)

155. Investigators, Inspectors and Deputies

(a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary properly to investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

(Amended by Stats. 1985, c. 1382, § 1.)

156. Contracts

(a) The director may, for the department and at the request and with the consent of a board within the department on whose behalf the contract is to be made, enter into contracts pursuant to Chapter 3 (commencing with Section 11250) of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code for and on behalf of any board within the department.

(b) In accordance with subdivision (a), the director may, in his or her discretion, negotiate and execute contracts for examination purposes which include provisions which hold harmless a contractor where liability resulting from a contract between a board in the department and the contractor is traceable to the state or its officers, agents, or employees.

(Added by Stats. 1953, c. 864, p. 2211, § 1. Amended by Stats. 1984, c. 144, § 3; Stats. 1988, c. 1448, § 1.)

156.1. Individuals or Entities Contracting for Provision of Services Relating to Treatment and Rehabilitation of Licentiates Impaired by Alcohol or Dangerous Drugs; Retention of Records; Confidentiality; Other Contracts for Services; Examination and Audit of Records

(a) Notwithstanding any other provision of law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs, shall retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the department. These records and documents shall be retained for a maximum of three years from the date of the last treatment or service rendered to that licentiate, or until such time as the records pertaining to treatment or services rendered to that licentiate are audited, whichever occurs first, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Notwithstanding any other provision of law, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department's internal auditor of all performance under the contract. For this purpose, all documents and records of the

contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the Auditor General to conduct any examination or audit under the terms of Section 10532 of the Government Code.

(Added by Stats. 1991, c. 654 (AB 1893), § 3.)

156.5. Rental Agreements

The director may negotiate and execute for the department and for its component agencies, rental agreements for short-term hiring of space and furnishings for examination or meeting purposes. The director may, in his or her discretion, negotiate and execute contracts for that space which include provisions which hold harmless the provider of the space where liability resulting from use of the space under the contract is traceable to the state or its officers, agents, or employees. Notwithstanding any other provision of law, the director may, in his or her discretion, advance payments as deposits to reserve and hold examination or meeting space. Any such agreement is subject to the approval of the legal office of the Department of General Services.

(Added by Stats. 1967, c. 1235, p. 3005, § 1. Amended by Stats. 1988, c. 1448, § 1.5.)

157. Expenses of Prosecutions or Unprofessional Conduct Proceedings

Expenses incurred by any board or on behalf of any board in any criminal prosecution or unprofessional conduct proceeding constitute proper charges against the funds of the board.

158. Refunds; Claims and Warrants

With the approval of the Director of Consumer Affairs, the boards and commissions comprising the department or subject to its jurisdiction may make refunds to applicants who are found ineligible to take the examinations or whose credentials are insufficient to entitle them to certificates or licenses.

Notwithstanding any other provision of law any application fees, license fees or penalties imposed and collected illegally, by mistake, inadvertence, or error shall be refunded. Claims authorized by the department shall be filed with the State Controller, and the Controller shall draw his warrant against the fund of the agency in payment of such refund.

159. Administration of Oaths and Affirmations; Certification

The members and the executive officer of each board, agency, bureau, division, or commission have power to administer oaths and affirmations in the performance of any business of the board, and to certify to official acts.

159.5. Division of Investigation; Chief of Division; Personnel

There is in the department the Division of Investigation. The division is in charge of a person with the title of chief of the division.

Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, to the agencies in the department shall be in the division and the personnel shall be appointed by the director. However, if, pursuant to the Governor's Reorganization Plan No. 2 of the 1970 Regular Session, any agency has any investigative, inspectional, or auditing positions of its own, the agency shall retain those positions until the director determines, after consultation with, and consideration of, the views of the particular agency concerned, that the positions should be transferred to the division in the interests of efficient, economical, and effective service to the public, at which time they shall be so transferred.

(Amended by Stats. 1985, c. 1382, § 2.)

160. Chief and Investigators; Authority of Peace Officers

The Chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Board of Dental Examiners have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

(Amended by Stats. 1989, c. 886, § 4.)

161. Sale of Copies of Records

The department, or any board in the department, may sell copies of any part of its respective public records, or compilations, extracts, or summaries of information contained in its public records, at a charge sufficient to pay the actual cost thereof. Such charge, and the conditions under which sales may be made, shall be determined by the director with the approval of the Department of General Services.

162. Officer's Certificate as Evidence

The certificate of the officer in charge of the records of any board in the department that any person was or was not on a specified date, or during a specified period of time, licensed, certified or registered under the provisions of law administered by the board, or that the license, certificate or registration of any person was revoked or under suspension, shall be admitted in any court as prima facie evidence of the facts therein recited.

163. Fee for Certification of Records and Documents

Except as otherwise expressly provided by law, the department and each board in the department shall charge a fee of two dollars (\$2) for the certification of a copy of any record, document, or paper in its custody or for the certification of any document evidencing the content of any such record, document or paper.

163.5. Delinquency, Penalty or Late Fee; Assessment; Reinstatement Fee; Percentage of Renewal Fee

Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for such license in effect on the date of the renewal of the license, but not less than twenty-five dollars (\$25) nor more than one hundred fifty dollars (\$150).

A delinquency, penalty, or late fee shall not be assessed until 30 days have elapsed from the date that the licensing agency mailed a notice of renewal to the licensee at the licensee's last known address of record. The notice shall specify the date for timely renewal, and that failure to renew in a timely fashion shall result in the assessment of a delinquency, penalty, or late fee.

In the event a reinstatement or like fee is charged for the reinstatement of a license, the reinstatement fee shall be 150 percent of the renewal fee for such license in effect on the date of the reinstatement of the license, but not more than twenty-five dollars (\$25) in excess of the renewal fee, except that in the event that such a fee is fixed by statute at less than 150 percent of the renewal fee and less than the renewal fee plus twenty-five dollars (\$25), the fee so fixed shall be charged.

(Amended by Stats. 1985, c. 587, § 1.)

164. Determination of Form and Content of Licenses, Certificates, Permits, or Similar Indicia of Authority

The form and content of any license, certificate, permit, or similar indicia of authority issued by any agency in the department, including any document evidencing renewal of a license, certificate, permit, or similar indicia of authority, shall be determined by the director after consultation with and consideration of the views of the agency concerned.

165. Fiscal Impact Analysis Relating to Pending Legislation; Review and Comment; Transmittal of Fiscal Data

Notwithstanding any other provision of law, no board, bureau, committee, commission, or program in the Department of Consumer Affairs shall submit to the Legislature any fiscal impact analysis relating to legislation pending before the Legislature until the analysis has been submitted to the Director of Consumer Affairs, or his or her designee, for review and comment. The boards, bureaus, committees, commissions, and programs shall include the comments of the director when submitting any fiscal impact analysis to the Legislature. This section shall not be construed to prohibit boards, bureaus, committees, commissions, and programs from responding to direct requests for fiscal data from Members of the Legislature or their staffs. In those instances it shall be the responsibility of boards, bureaus, committees, commissions, and programs to also transmit that information to the director, or his or her designee, within five working days.

(Added by Stats. 1984, c. 268, §2, eff. June 30, 1984.)

166. Mandatory Continuing Education Programs; Guidelines

The director shall, by regulation, develop guidelines to prescribe components for mandatory continuing education programs administered by any board within the department.

(a) The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection. The guidelines shall require mandatory continuing education programs to address, at least, the following:

- (1) Course validity.
- (2) Occupational relevancy.
- (3) Effective presentation.
- (4) Actual attendance.
- (5) Material assimilation.
- (6) Potential for application.

(b) The director shall consider educational principles, and the guidelines shall prescribe mandatory continuing education program formats to include, but not be limited to, the following:

- (1) The specified audience.
- (2) Identification of what is to be learned.
- (3) Clear goals and objectives.
- (4) Relevant learning methods (participatory, hands-on, or clinical setting).
- (5) Evaluation, focused on the learner and the assessment of the intended learning outcomes (goals and objectives).

(c) Any board within the department that, after January 1, 1993, proposes a mandatory continuing education program for its licensees shall submit the proposed program to the director for review to assure that the program contains all the elements set forth in this section and complies with the guidelines developed by the director.

(d) Any board administering a mandatory continuing education program that proposes to amend its current program shall do so in a manner consistent with this section.

(e) Any board currently administering a mandatory continuing education program shall review the components and requirements of the program to determine the extent to which they are consistent with the guidelines developed under this section. The board shall submit a report of their findings to the director. The report shall identify the similarities and differences of its mandatory continuing education program. The report shall include any board-specific needs to explain the variation from the director's guidelines.

(f) Any board administering a mandatory continuing education program, when accepting hours for credit which are obtained out of state, shall ensure that the course for which credit is given is administered in accordance with the guidelines addressed in subdivision (a).

(g) Nothing in this section or in the guidelines adopted by the director shall be construed to repeal any requirements for continuing education programs set forth in any other provision of this code.

(Added by Stats. 1992, Ch. 1135 (SB 2044), § 2.2. Amended by Stats. 1994, c. 146 (AB 3601), § 1.)

CHAPTER 3. FUNDS OF THE DEPARTMENT

201. Pro Rata Charge for Administrative Expenses

A charge for the estimated administrative expenses of the department, not to exceed the available balance in any appropriation for any one fiscal year, may be levied in advance on a pro rata share basis against any of the funds of any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance.

CHAPTER 4. CONSUMER AFFAIRS

Article 3. Powers and Duties

310. Powers and Duties

The director shall have the following powers and it shall be his duty to:

- (a) Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.
- (b) Represent the consumer's interests before federal and state legislative hearings and executive commissions.
- (c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.
- (d) Study, investigate, research, and analyze matters affecting the interests of consumers.
- (e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information.
- (f) Propose and assist in the creation and development of consumer education programs.
- (g) Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services.
- (h) Advise the Governor and Legislature on all matters affecting the interests of consumers.
- (i) Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.

(j) Maintain contact and liaison with consumer groups in California and nationally.

312. Reports and Recommendations

The director shall submit to the Governor and the Legislature during the month of December prior to each regular session of the Legislature a full and accurate report of the activities of the department relating to consumer affairs and an evaluation of the consumer programs of each state agency. The report shall include recommendations, when appropriate, for legislation that will protect and promote the interests of consumers.

The required evaluation of the consumer programs of each state agency shall include, but is not limited to, comment with respect to the scope, effectiveness, and efficiency of the consumer programs within each agency as well as deficiencies noted in the coordination, administration, or enforcement of the programs.

The director shall include within the report information regarding his or her experience in obtaining and disseminating information with respect to information available from other departments of the state.

(Amended by Stats. 1998, c. 829 (SB 1652), § 1.)

313.1. Rules and Regulations; Fee Changes; Approval of Director

(a) Notwithstanding any other provision of law to the contrary, no rule or regulation, except those relating to examinations and qualifications for licensure, and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.

(b) The director shall be formally notified of and shall be provided a full opportunity to review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and this section, all of the following:

- (1) All notices of proposed action, any modifications and supplements thereto, and the text of proposed regulations.
- (2) Any notices of sufficiently related changes to regulations previously noticed to the public, and the text of proposed regulations showing modifications to the text.
- (3) Final rulemaking records.

(c) The submission of all notices and final rulemaking records to the director and the completion of the director's review, as authorized by this section, shall be a precondition to the filing of any rule or regulation with the Office of Administrative Law. The Office of Administrative Law shall have no jurisdiction to review a rule or regulation subject to this section until after the completion of the director's review and only then if the director has not disapproved it. The filing of any document with the Office of Administrative Law shall be accompanied by a certification that the board, commission, or committee has complied with the requirements of this section.

(d) Following the receipt of any final rulemaking record subject to subdivision (a), the director shall have the authority for a period of 30 days to disapprove a proposed rule or regulation on the ground that it is injurious to the public health, safety, or welfare.

(e) Final rulemaking records shall be filed with the director within the one-year notice period specified in Section 11346.4 of the Government Code. If necessary for compliance with this section, the one-year notice period may be extended, as specified by this subdivision.

(1) In the event that the one-year notice period lapses during the director's 30-day review period, or within 60 days following the notice of the director's disapproval, it may be extended for a maximum of 90 days.

(2) If the director approves the final rulemaking record or declines to take action on it within 30 days, the board, commission, or committee shall have five days from the receipt of the record from the director within which to file it with the Office of Administrative Law.

(3) If the director disapproves a rule or regulation, it shall have no force or effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Nothing in this section shall be construed to prohibit the director from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him or her, in which event it shall become effective upon compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1991, c. 654 (AB 1893), § 4; Stats. 1992, c. 1289 (AB 2743), § 2; Amended by Stats. 1994, c. 26 (AB 1807), § 13, eff. March 30, 1994.)

313.2. Americans with Disabilities Act; Regulations; Professional Licensing and Certification

The director shall adopt regulations to implement, interpret, and make specific the provisions of the Americans with Disabilities Act (P.L. 101-336), as they relate to the examination process for professional licensing and certification programs under the purview of the department.

Article 4. Representation of Consumers

320. Intervention to Protect Consumer Interests

Whenever there is pending before any state commission, regulatory agency, department, or other state agency, or any state or federal court or agency, any matter or proceeding which the director finds may affect substantially the interests of consumers within California, the director, or the Attorney General, may intervene in such matter or proceeding in any appropriate manner to represent the interests of consumers. The director, or any officer or employee designated by the director for that purpose, or the Attorney General, may thereafter present to such agency, court, or department, in conformity with the rules of practice and procedure thereof, such evidence and argument as he shall determine to be necessary, for the effective protection of the interests of consumers.

321. Commencement of Legal Proceedings

Whenever it appears to the director that the interests of the consumers of this state are being damaged, or may be damaged, by any person who engaged in, or intends to engage in, any acts or practices in violation of any law of this state, or any federal law, the director or any officer or employee designated by the director, or the Attorney General, may commence legal proceedings in the appropriate forum to enjoin such acts or practices and may seek other appropriate relief on behalf of such consumers.

Article 5. Consumer Complaints

325. Reception of Complaints

It shall be the duty of the director to receive complaints from consumers concerning (a) unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in the conduct of any trade or commerce; (b) the production, distribution, sale, and lease of any goods and services undertaken by any person which may endanger the public health, safety, or welfare; (c) violations of provisions of this code relating to businesses and professions licensed by any agency of the department, and regulations promulgated pursuant thereto; and (d) other matters consistent with the purposes of this chapter, whenever appropriate.

326. Notice of Complaint; Referral; Patterns of Complaints

(a) Upon receipt of any complaint pursuant to Section 325, the director may notify the person against whom the complaint is made of the nature of the complaint and may request appropriate relief for the consumer.

(b) The director shall also transmit any valid complaint to the local, state or federal agency whose authority provides the most effective means to secure the relief.

(c) The director shall, if appropriate, advise the consumer of the action taken on the complaint and of any other means which may be available to the consumer to secure relief.

If the director receives a complaint or receives information from any source indicating a probable violation of any law, rule, or order of any regulatory agency of the state, or if a pattern of complaints from consumers develops, the director shall transmit any complaint he or she considers to be valid to any appropriate law enforcement or regulatory agency and any evidence or information he or she may have concerning the probable violation or pattern of complaints or request the Attorney General to undertake appropriate legal action. It shall be the continuing duty of the director to discern patterns of complaints and to ascertain the nature and extent of action taken with respect to the probable violations or pattern of complaints.

(Amended by Stats. 1989, c. 1360, § 1.)

327. Reports; Contents

The director shall submit to the Governor and the Legislature as part of his annual report information concerning his activities pursuant to Section 326, including the number and general patterns of consumer complaints, the action taken on such complaints, the results of such action, if available, and recommendations which will further the state's capability to resolve consumer complaints.

Article 6. Information

335. Dissemination

The director shall disseminate to the public in such form and manner as he deems most appropriate information, statistics, and other data concerning the following:

- (a) Functions, duties, powers, and activities of the department and of those agencies whose authority provides relief from commercial and trade practices which are inimical to the interests of the consumer.
- (b) Commercial and trade practices which are detrimental to consumers.
- (c) Goods and services which are unsafe, unhealthful or inimical to the general welfare of consumers.
- (d) General economic conditions.
- (e) Test results, analyses, and studies of consumer products and services in the possession of state and federal agencies.
- (f) Consumer education which the director may develop on his own initiative or obtain from other sources.
- (g) Legislation of interest to consumers.

336. Annual Report

The director shall include as part of his annual report information regarding his activities pursuant to this article and his success in obtaining and disseminating information with respect to information available from other departments of the state.

CHAPTER 6. PUBLIC MEMBERS

450. Qualifications; Employment or Contractual Relationship

In addition to the qualifications provided in the respective chapters of this code, a public member or a lay member of any board shall not be, nor shall he have been within the period of five years immediately preceding his appointment, any of the following:

- (a) An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licentiate of such board, except that this shall not preclude the appointment of a person which maintains infrequent employer status with such licentiate, or maintains a client, patient, or customer relationship with any such licentiate which does not constitute more than 2 percent of the practice or business of the licentiate.
- (b) A person maintaining a contractual relationship with a licentiate of such board, which would constitute more than 2 percent of the practice or business of any such licentiate, or an officer, director, or substantially full-time representative of such person or group of persons.
- (c) An employee of any licentiate of such board, or a representative of such employee, except that this shall not preclude the appointment of a person who maintains an infrequent employee relationship or a person rendering professional or related services to a licentiate if such employment or service does not constitute more than 2 percent of the employment or practice of the member of the board.

450.3. Financial Interest in Organization Subject to Regulation

No public member shall either at the time of his appointment or during his tenure in office have any financial interest in any organization subject to regulation by the board, commission or committee of which he is a member.

450.4. Expert Public Member

Each board shall have, as one of its public members, a person who possesses expertise in one or more significant portions of the board's regulated activities.

450.5. Qualifications; Conflicting Pursuits

A public member, or a lay member, shall not have been engaged at any time within five years immediately preceding his appointment in pursuits which lie within the field of the industry or profession regulated by the board of which he is a member, nor shall he engage in any such pursuits during his term of office.

450.6. Age Requirement

Notwithstanding any other section of law, a public member may be appointed without regard to age so long as the public member has reached the age of majority prior to appointment.

451. Delegated Authority; Restrictions

If any board shall as a part of its functions delegate any duty or responsibility to be performed by a single member of such board, such delegation shall not be made solely to any public member or any lay member of the board in any of the following instances:

- (a) The actual preparation of, the administration of, and the grading of, examinations.
- (b) The inspection or investigation of licentiates, the manner or method of practice or doing business, or their place of practice or business.

Nothing in this section shall be construed as precluding a public member or a lay member from participating in the formation of policy relating to the scope of the activities set forth in subdivisions (a) and (b) or in the approval, disapproval or modification of the action of its individual members, nor preclude such member from participating as a member of a subcommittee consisting of more than one member of the board in the performance of any duty.

452. Board Defined

"Board," as used in this chapter, includes a board, advisory board, commission, examining committee, committee or other similarly constituted body exercising powers under this code.

CHAPTER 7. LICENSEE

460. Validity of State License in Municipalities; Local License Taxes

No city or county shall prohibit a person, authorized by one of the agencies in the Department of Consumer Affairs by a license, certificate, or other such means to engage in a particular business, from engaging in that business, occupation, or profession or any portion thereof. Nothing in this section shall prohibit any city or county or city and county from levying a business license tax solely for revenue purposes nor any city or county from levying a license tax solely for the purpose of covering the cost of regulation.

461. Applications; Record of Arrest Not Resulting in Conviction or Plea of Nolo Contendere; Prohibition; Exceptions

No public agency, state or local, shall, on an initial application form for any license, certificate or registration, ask for or require the applicant to reveal a record of arrest that did not result in a conviction or a plea of nolo contendere. A violation of this section is a misdemeanor.

This section shall apply in the case of any license, certificate or registration provided for by any law of this state or local government, including, but not limited to, this code, the Corporations Code, the Education Code, and the Insurance Code.

462. Inactive Category of Licensure; Regulations; Application

(a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following provisions:

(1) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(2) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license.

(3) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.

(4) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with all the following:

(A) Pay the renewal fee.

(B) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

(c) This section shall not apply to any healing arts board as specified in Section 701.

(Added by Stats. 1994, c. 26 (AB 1807), § 14, eff. March 30, 1994.)

DIVISION 1.2. LEGISLATIVE SUNSET REVIEW COMMITTEE

473. Establishment; Members; Powers and Duties; Staff; Termination

- (a) There is hereby established the Joint Legislative Sunset Review Committee.
- (c) The Joint Legislative Sunset Review Committee shall consist of three members appointed by the Senate Committee on Rules and three members appointed by the Speaker of the Assembly. No more than two of the three members appointed from either the Senate or the Assembly shall be from the same party. The Joint Rules Committee shall appoint the chairperson of the committee.
- (d) (c) The Joint Legislative Sunset Review Committee shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.
- (d) The Speaker of the Assembly and the Senate Committee on Rules may designate staff for the Joint Legislative Sunset Review Committee.
- (e) The Joint Legislative Sunset Review Committee is authorized to act until January 1, 2004, at which time the committee's existence shall terminate.

(Added by Stats. 1994, c. 908 (SB 2036), § 5. Amended by Stats. 1998, c. 991 (SB 1980), § 2.)

473.1. Application of Division; Boards

This division shall apply to all of the following:

- (a) Every board, as defined in Section 22, that is scheduled to become inoperative on July 1, 1997, July 1, 1998, or July 1, 1999, and to be repealed on either January 1, 1998, January 1, 1999, or January 1, 2000, respectively, by the act which enacted this division.
- (b) The Bureau for Postsecondary and Vocational Education. For purposes of this division, "board" includes the bureau.

(Added by Stats. 1994, c. 908 (SB 2036), § 5. Amended by Stats. 1997, c. 78 (AB 71), § 3.5.)

473.2. Analysis and Report by Boards; Contents

All boards to which this division applies shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the Joint Legislative Sunset Review Committee no later than one year plus 90 days prior to the January 1st of the year during which that board shall become inoperative. The analysis and report shall include, at a minimum, all of the following:

- (a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.
- (b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.
- (c) The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.
- (d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, relevancy and validity of the licensing examination, and passage rate and areas of examination.
- (e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.3 Public Hearings Prior to Termination, Continuation, or Reestablishment of any Board; Burden of Proof

(a) Prior to the termination, continuation, or reestablishment of any board or any of the board's functions, the Joint Legislative Sunset Review Committee shall, during the interim recess preceding the date upon which a board becomes inoperative, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, and the public and regulated industry. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(b) In addition to subdivision (a), in the year 2001 and every four years thereafter, the committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the Bureau for Private Postsecondary and Vocational Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued

existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.

(Added by Stats. 1994, c. 908 (SB 2036), § 5. Amended by Stats. 1997, c. 78 (AB 71), § 3.7.)

473.4. Evaluation and Determination of Whether Public Need Demonstrated to Warrant Continued Existence; Minimum Performance Standards; Responsibilities and Jurisdiction of Board; Alternatives

(a) The Joint Legislative Sunset Review Committee shall evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for the degree of regulation the board or regulatory program implements based on the following factors and minimum standards of performance:

- (1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.
- (2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.
- (3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.
- (4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.
- (5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.
- (6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.
- (7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.
- (8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.
- (9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.
- (10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.
- (11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

(b) The Joint Legislative Sunset Review Committee shall consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

(c) Nothing in this section precludes any board from submitting other appropriate information to the Joint Legislative Sunset Review Committee.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.5. Committee Report on Findings and Recommendations; Contents

The Joint Legislative Sunset Review Committee shall report its findings and recommendations to the department for its review, and, within 60 days of receiving the report, the department shall report its findings and recommendations, which shall incorporate the findings and recommendations of the Joint Legislative Sunset Review Committee, to the Legislature during the next year of the regular session that follows the hearings described in Section 473.3. The report shall include whether each board or function scheduled for repeal shall be terminated, continued, or reestablished, and whether its functions should be revised. If the committee or the department deems it advisable, the report may include proposed bills to carry out its recommendations.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.6. Referral of Legislative Issues or Proposals

The chairpersons of the appropriate policy committees of the Legislature may refer to the Joint Legislative Sunset Review Committee any legislative issues or proposals to create new licensure categories or create a new licensing board if the issues or proposals are related to the review of a particular board pursuant to this division.

(Added by Stats. 1997, c. 759 (SB 827), § 7.)

DIVISION 1.5. DENIAL, SUSPENSION AND REVOCATION OF LICENSES

CHAPTER 1. GENERAL PROVISIONS

475. Denial of Licenses; Grounds

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

(Amended by Stats. 1992, c. 1289 (AB 2743), § 5.)

476. Inapplicability of Division to Certain Persons

Nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(Amended by Stats. 1983, c. 721, § 1.)

477. Board; License

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

(Amended by Stats. 1991, c. 654 (AB 1893), § 5.)

478. Application; Material

(a) As used in this division, "application" includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.

(b) As used in this division, "material" includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

(Added by Stats. 1992, c. 1289 (AB 2743), § 6.)

CHAPTER 2. DENIAL OF LICENSES

480. Acts Disqualifying Applicant

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

(Amended by Stats. 1979, c. 876, p. 3057, § 2.)

481. Criteria; Crime or Act Substantially Related to Qualifications, Functions or Duties

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

482. Evaluation of Rehabilitation; Criteria

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

484. Attestation by Other Persons to Good Moral Character; Requirement for Application for License

No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

485. Procedure by Board Upon Denial of Application for License

Upon denial of an application for a license, under this chapter or Section 496, the board shall do either of the following:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his [or her](#) application or otherwise. Service by mail is complete on the date of mailing.

(Amended by Stats. 1997, c. 758 (SB 1346), § 2.3.)

486. Reapplication; Informing Applicant of Requirements

Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

(Amended by Stats. 1997, c. 758 (SB 1346), § 2.4.)

487. Hearing

If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing.

Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

489. Denial of License for Lack of Good Character

Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

(Formerly § 116, added by Stats. 1955, c. 1151, § 1. Amended by Stats. 1978, c. 1161, § 2. Renumbered § 489 and amended by Stats. 1989, c. 1104, § 1. Amended by Stats. 1997, c. 758 (SB 1346), § 2.5.)

CHAPTER 3. SUSPENSION AND REVOCATION OF LICENSES

490. Conviction of Crime; Relationship of Crime to Licensed Activity

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(Amended by Stats. 1992, c. 1289 (AB 2743), § 7.)

490.5. Noncompliance with Support Order or Judgment

A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment.

(Added by Stats. 1994, c. 906 (AB 923), § 1, operative Jan. 1, 1996.)

491. Information to Ex-Licensee

Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

- (a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.
- (b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

492. Healing Arts; Disciplinary Action or License Denial Notwithstanding Drug Diversion Program; Exception

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

(Amended by Stats. 1994, c. 26 (AB 1807), § 15, eff. March 30, 1994.)

493. Record of Convictions Related to Qualifications, Functions and Duties of Licensees

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may

inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(Formerly § 117, added by Stats. 1961, c. 934, § 1. Amended by Stats. 1978, c. 1161, § 3. Renumbered § 493 and amended by Stats. 1989, c. 1104, § 1.3.)

494. Interim Order; Notice; Hearing; Decision; Judicial Review; Noncompliance

(a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licensee, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licensee was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licensee from his or her business or profession, and the licensee violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licensee and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

(Added by Stats. 1993, c. 840 (SB 842), § 1. Amended by Stats. 1994, c. 1275 (SB 2101, § 4.)

CHAPTER 4. PUBLIC REPROVALS

495. Authority; Procedure

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licensee or certificate holder thereof, for any act which would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

(Amended by Stats. 1997, c. 220 (SB 68), § 2, eff. Aug. 4, 1997.)

CHAPTER 5. EXAMINATION SECURITY

496. Violation of § 123; Denial, Suspension, or Revocation of License

A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

(Added by Stats. 1989, c. 1022, § 3.)

498. License Secured by Fraud, Deceit or Knowing Misrepresentation

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

(Added by Stats. 1992, c. 1289 (AB 2743), § 8.)

499. False Statement in Support of Another Person's Application

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

(Added by Stats. 1992, c. 1289 (AB 2743), § 9.)

DIVISION 2. HEALING ARTS

CHAPTER 1. GENERAL PROVISIONS

Article 7. Nursing

675. Notice of Unaccredited Course of Instruction

Every person, firm, association, partnership, or corporation offering a course of instruction in any type of nursing, including vocational nursing or practical nursing, which course of instruction is not accredited by the Board of Registered Nursing or by the Board of Vocational Nursing and Psychiatric Technicians and completion of which will not qualify a person to take any examination given by either board shall notify an applicant for admission thereto that the course of instruction is not accredited by either board and that completion thereof will not qualify the person to take any examination given by either board.

The notice required by this section shall be in writing in at least 12-point boldface type, and in no event less than two points larger than the type in any other portion of the notice or contract, and shall be given to an applicant prior to the signing of any contract by the applicant or, if no contract is signed, prior to the making of any deposit or other payment by the applicant.

If an applicant is required to sign a contract in order to enroll in the course of instruction, the notice required by this section shall be contained in the contract directly above the place for the applicant's signature.

(Amended by Ststs. 1997, c. 759 (SB 827), § 8.)

676. Applicability of Article

The provisions contained in this article shall not apply to inservice training programs given in institutions for the purpose of qualifying persons to work therein, to public schools, to private schools or institutions offering advanced nursing education to registered nurses or vocational nurses licensed in the United States, or to schools conducted by any recognized church or denomination for the purpose of training the adherents of such church or denomination in the care of the sick in accordance with its religious tenets.

677. Maintenance of Records; Inspection; Contents

Every person, firm, association, partnership, or corporation subject to the provisions of this article shall maintain records for at least three years, which records shall be open to inspection by investigators of the Division of Investigation of the department and by peace officers acting in their official capacity.

The records shall include the names and address of the persons admitted to the course of instruction and a copy of any written contract signed by such a person or, if no contract is signed, a copy of the written notice given to such person.

A correspondence school whose home office is located outside of this state need maintain the foregoing records only for persons residing in this state.

678. Effect of Failure to Give Notice Upon Validity of Contracts

The failure to give the notice required by this article shall make any contract entered into between the parties null and void.

679. Violation; Misdemeanor

Any person, firm, association, partnership, or corporation who violates this article is guilty of a misdemeanor.

Article 7.5 Health Care Practitioners

680. Name Tags for Health Care Practitioners; Display

Except as otherwise provided in this subdivision, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse, or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse's aide from using his or her title. For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

Article 10. Federal Personnel

715. License Requirements; Exemptions

Unless otherwise required by federal law or regulation, no board under this division which licenses dentists, physicians and surgeons, podiatrists, or nurses may require a person to obtain or maintain any license to practice a profession or render services in the State of California if one of the following applies:

(a) The person practicing a profession or rendering services does so exclusively as an employee of a department, bureau, office, division, or similarly constituted agency of the federal government, and provides medical services exclusively on a federal reservation or at any facility wholly supported by and maintained by the United States government.

(b) The person practicing a profession or rendering services does so solely pursuant to a contract with the federal government on a federal reservation or at any facility wholly supported and maintained by the United States government.

(c) The person practicing a profession or rendering services does so pursuant to, or as a part of a program or project conducted or administered by a department, bureau, office, division, or similarly constituted agency of the federal government which by federal statute expressly exempts persons practicing a profession or rendering services as part of the program or project from state laws requiring licensure.

(Added by Stats. 1983, c. 239, § 2. Amended by Stats. 1986, c. 220, § 7.5, urgency eff. June 30, 1986.)

716. Denial of Issuance of License or Disciplinary Action to State Licensee

Notwithstanding any other provision of law, a board under this division may deny issuance of a license to an applicant or take disciplinary action against the holder of a California license for acts or omissions committed by the applicant or licensee in the course of professional practice or rendering services described in Section 715 if both of the following apply:

(a) The acts or omissions committed by the applicant or licensee constituted grounds for denial or discipline pursuant to the laws of this state governing licensees or applicants for licensure for the profession or vocation in question.

(b) The acts or omissions constituting the basis for denial or discipline by the agency were not authorized, exempted or rendered inconsistent by federal statute.

717. Limitations on Application of Article

This article is not intended to address the scope of practice of a dentist, physician and surgeon, or nurse licensed under this division, and nothing in this article shall be construed to restrict, expand, alter, or modify the existing scope of practice established by federal statute or regulation.

Article 10.5. Unprofessional Conduct

726. Sexual Abuse, Misconduct, or Relations with a Patient

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(Amended by Stats. 1993, c. 1072 (SB 743), § 1.)

Article 11. Professional Reporting

800. Central Files; Creation; Contents; Complaint Forms; Confidentiality

(a) The Medical Board of California, the Board of Dental Examiners, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from such board. Each central file shall be created and maintained to provide an individual historical

record for each licensee with respect to (1) any conviction of a crime in this or any other state which constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement requiring the licensee or his or her insurer, to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information which the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

(Amended by Stats. 1994, c. 26 (AB 1807), § 15.5, eff. March 30, 1994; Stats. 1995, c. 5 (SB 158), § 1; Stats. 1995, c. 60 (SB 42), § 6, eff. July 6, 1995; Stats. 1995, c. 708 (SB 609), 1.5.; Stats. 1997, c. 759 (SB 827), § 9.)

801. Settlement or Arbitration Award; Report by Insurer; Consent of Insured

(a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), and (d)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars (\$30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Board of Dental Examiners of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report

shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

(Amended by Stats. 1991, c. 1091 (AB 1487), § 2; Stats. 1991, c. 359 (AB 1332), § 6; Stats. 1994, c. 468 (AB 559), § 1; Stats. 1994, c. 1206 (SB 1775), § 8; Stats. 1995, c. (SB 158), § 2; Stats. 1997, c. 359 (AB 103), § 1.)

802. Settlement or Arbitration Award; Report by Holder of Authority, Parties or Counsel; Public Offense, Fines

(a) Every settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a person who holds a license, certificate or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement over thirty thousand dollars (\$30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) Every settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a marriage, family, and child counselor or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990), who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage, family, and child counselor or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in that compliance is a public

offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(Added by Stats. 1975, 2nd Sess, c. 1, p. 3950, § 2.3. Amended by Stats. 1979, c. 923, p. 3200, § 2; Stats. 1989, c. 398, § 2; Amended by Stats. 1997, c. 359 (AB 103), § 2.)

803. Judgment Against Holder of License, Certificate or Other Authority; Reports to Issuing Agency and Medical Board; Release of Information to Public

(a) (1) Except as provided in paragraph (2), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(2) For purposes of a physician and surgeon who has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that fact to the agency that issued the license.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report to the Medical Board of California as to any judgment of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received pursuant to subdivision (a) regarding felony convictions of, and judgments against, a physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

(Added by Stats. 1993, c. 1267 (SB 916), § 4. Amended by Stats. 1995, c. 708 (SB 609), § 4; Stats. 1997, c. 359 (AB 103), § 3.)

804. Reports to Agency; Form and Contents; Copies

(a) Any agency to whom reports are to be sent under Section 801, 801.1, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.

(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.

(d) Every professional liability insurer that makes a report under Section 801, or self-insured governmental agency that makes a report pursuant to Section 801.1, and has received a copy of any written patient medical or hospital records prepared by the treating physician or the staff of the treating physician or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the claim prompting the Section 801 or 801.1 report, or a copy of any depositions in the matter that discuss the care, treatment, or medical condition of the person, shall provide with the report copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California to the insurer, except when confidentiality is required by court order. If confidentiality is required by court order and, as a result, the insurer is unable to provide the records and depositions, documentation to

that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability insurer or self-insured governmental agency shall maintain the records and depositions referred to in this subdivision for at least one year from the date of the Section 801 or 801.1 report.

806. Statistical Report; Presentation to Legislature

Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon such records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including a summary of administrative and disciplinary action taken with respect to such reports and any recommendations for corrective legislation if the agency considers such legislation to be necessary.

Article 12. Insurance Fraud

810. False or Fraudulent Claims; Disciplinary Action

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

(Amended by Stats. 1991, c. 116 (SB 1218), § 1; Stats. 1997, c. 758 (SB 1346), § 2.6.)

Article 12.5. Mental Illness or Physical Illness

820. Examination; Report

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

(Added by Stats. 1982, c. 1183, p. 4216, § 1. Amended by Stats. 1989, c. 1104, § 1.7.)

821. Failure to comply with Order; Suspension or Revocation

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

822. Disposition Alternatives; Reinstatement

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

823. Procedures for Reinstatement; Terms and Conditions

Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

- (a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.
- (b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.
- (c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.
- (d) Requiring the licentiate to undergo continuing treatment.
- (e) Restricting or limiting the extent, scope or type of practice of the licentiate.

824. Alternative Provisions for Proceeding

The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

825. Licensing Agency

As used in this article with reference to persons holding licenses as physicians and surgeons, "licensing agency" means a panel of the Division of Medical Quality.

(Amended by Stats. 1993, c. 1267 (SB 916), § 9.)

826. Procedure; Law Governing

The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

827. Closed Sessions

Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

828. Confidentiality, Purgation, and Destruction of Records; Use in Subsequent Proceeding

If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensing agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiate's fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

CHAPTER 1.5. EXEMPTION FROM LICENSURE

900. Health Care Practitioners Licensed in Another State; State of Emergency; Deploying of Practitioners

(a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of

emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

(f) For the purposes of this chapter, "health care practitioner" means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(g) For purposes of this chapter, "director" means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(Added by Stats. 1989, c. 97, § 2, eff. July 7, 1989.)

CHAPTER 3. CLINICAL LABORATORY TECHNOLOGY

Article 3. Application of the Chapter

1242.5 Unlicensed Laboratory Personnel Employed in Licensed Clinics or Hospitals; Vein, Arterial or Skin Punctures; Training

The department may by regulation authorize unlicensed laboratory personnel who are employed in clinical laboratories in licensed clinics or hospitals, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code, to perform venipuncture, arterial puncture, or skin puncture for the purposes of withdrawing blood or for test purposes, as defined by regulations established by the department. The department shall establish the minimum training required for such persons.

(Added by Stats. 1979, c. 176, p. 394, § 1. Amended by Stats. 1988, c. 1396, § 1, eff. Sept. 27, 1988.)

1242.6. Registered Nurses, Licensed Vocational Nurses, and Respiratory Care Practitioners; Arterial, Vein, or Skin Punctures; Authorization and Competency

(a) Any registered nurse licensed under the provisions of Chapter 6 (commencing with Section 2700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon or any licensed dentist.

(b) Any licensed vocational nurse licensed under the provisions of Chapter 6.5 (commencing with Section 2840) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon, or any licensed dentist if prior thereto the licensed vocational nurse has been instructed by a physician and surgeon and has demonstrated competence to the physician and surgeon in the proper procedure to be employed when withdrawing blood, or has satisfactorily completed a prescribed course of instruction approved by the Board of Vocational Nursing and Psychiatric Technicians or has demonstrated competence to the satisfaction of that board.

(c) Any respiratory care practitioner certified under the provisions of Chapter 8.3 (commencing with Section 3700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon.

(Added by Stats. 1973, c. 748, § 1. Amended by Stats. 1974, c. 838, p. 1803, § 1; Stats. 1975, c. 629, p. 1363, § 1; Stats. 1988, c. 1396, § 1.5, eff. Sept. 27, 1988; Amended by Stats. 1997, c. 759 (SB 827), § 10.)

1245. Blood Gas Analysis

(a) Any individual may perform a blood gas analysis if all the following conditions exist:

(1) He or she has earned a high school diploma or equivalent, as determined by HCFA pursuant to CLIA.

(2) He or she performs the blood gas analysis in a clinic or a general acute care hospital, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code.

(3) He or she has been instructed by a physician and surgeon licensed in this state, who is in charge of a department of pulmonary physiology or clinical pathology in licensed clinics or hospitals, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code, in the proper procedure to be employed when performing a blood gas analysis.

(4) He or she performs the blood gas analysis under the direction and supervision of the physician and surgeon.

(5) He or she submits the analysis for interpretation to the physician and surgeon under whose direction and supervision he or she performed the analysis.

(b) After September 1, 1997, any person may perform a blood gas analysis classified as of high complexity under CLIA, if, in addition to the requirements of subdivision (a), he or she has earned an associate degree related to pulmonary function from an accredited institution as determined by HCFA pursuant to CLIA.

(c) Nothing contained in this section shall be construed as authorizing any individual, not otherwise authorized, to withdraw blood.

(d) Nothing contained in this section is applicable to a person licensed as a respiratory care practitioner under Chapter 8.3 (commencing with Section 3700). Those persons are authorized to perform those functions set forth in that chapter. (Added by Stats. 1979, c. 176, p. 394, § 2. Amended by Stats. 1987, c. 839, § 2; Stats. 1995, c. 510 (SB 113), § 23.)

1246. Venipuncture or Skin Puncture by Unlicensed Person

Except as provided in Section 13354 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood for test purposes upon specific authorization from a licensed physician and surgeon provided that he meets all the following requirements:

(a) He works under the supervision of a person licensed under this chapter or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of such procedures.

(b) He has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

Article 3.5. Hemodialysis Training

1247.3. Treatment of Patients; Venipuncture and Arterial Puncture; Administration of Medications; Immediate Supervision of Home Treatment

The treatment of patients by a hemodialysis technician includes performing venipuncture and arterial puncture for the purpose of providing dialysis treatment for a patient. The treatment of patients includes the administration of local anesthetics, heparin, and sodium chloride solutions. The administration of these medications shall be pursuant to protocol established by the medical director of the hemodialysis clinic or unit and shall be under the immediate supervision of a licensed physician and surgeon or a licensed registered nurse. The administration of local anesthetics shall be limited to intradermal, subcutaneous, or topical administration. Hemodialysis technicians who treat patients in the home and are certified by the Board of Nephrology Examination for Nurses and Technicians are exempted from the requirements of immediate supervision until January 1, 1991.

(Added by Stats. 1987, c. 1297, § 4. Amended by Stats. 1989, c. 248, § 2, eff. July 31, 1989.)

CHAPTER 5. MEDICINE

Article 18. Corporations

2406. Medical or Podiatry Corporation; Corporate Status; Regulatory Agency

A medical corporation or podiatry corporation is a corporation which is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical corporation only, physician assistants, are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Division of Licensing.

(Amended by Stats. 1994, c. 26 (AB 1807), § 24, eff. March 30, 1994.)

CHAPTER 6.6. PSYCHOLOGISTS

Article 1. General Provisions

2908. Psychological Activities, Members of Other Professional Groups

Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational

psychologists, marriage, family and child counselors, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer avocational or vocational self-improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words “psychological,” “psychologist,” “psychology,” “psychometrist,” “psychometrics,” or “psychometry” or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.

Article 9. Psychological Corporations

2995. Corporate Status; Conditions; Regulatory Agency

A psychological corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officer, directors and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, marriage, family, and child counselors, licensed clinical social workers, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

With respect to a psychological corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Psychology of the Medical Board of California.

(Amended by Stats. 1990, c. 622 (SB 2720), § 6.)

CHAPTER 9. PHARMACY

Article 4. Requirements for Prescriptions

4072. Health Care Facilities; Oral or Electronic Transmission of Prescription

(a) Notwithstanding any other provision of law, a pharmacist, registered nurse, licensed vocational nurse, licensed psychiatric technician, or other healing arts licensee, if so authorized by administrative regulation, who is employed by or serves as a consultant for a licensed skilled nursing, intermediate care or other health care facility, may orally or electronically transmit to the furnisher a prescription lawfully ordered by a person authorized to prescribe drugs or devices pursuant to Sections 4040 and 4070. The furnisher shall take appropriate steps to determine that the person who transmits the prescription is authorized to do so and shall record the name of the person who transmits the order. This section shall not apply to orders for Schedule II controlled substances.

(b) In enacting this section, the Legislature recognized and affirms the role of the Department of Health Services in regulating drug order processing requirements for licensed health care facilities as set forth in Title 22 of the California Code of Regulations as they may be amended from time to time.

(Added by Stats. 1996, c. 890 (AB 2802), § 3. Amended by Stats. 1997, c. 549 (SB 1349), § 47.)

DIVISION 7. GENERAL BUSINESS RELATIONS

PART 3. REPRESENTATIONS TO THE PUBLIC

CHAPTER 1. ADVERTISING

Article 1. False Advertising in General

17500. False or Misleading Statements

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to

so make or disseminate or cause to be so made or disseminated by any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Amended by Stats. 1979, c. 492, p. 1660, § 1.)

17500.1. Rules Restricting or Prohibiting Advertising Proscribed; State Bar Exception

Notwithstanding any other provision of law, no trade or professional association, or state agency, state board, or state commission within the Department of Consumer Affairs shall enact any rule, regulation, or code of professional ethics which shall restrict or prohibit advertising by any commercial or professional person, firm, partnership or corporation which does not violate the provisions of Section 17500 of the Business and Professions Code, or which is not prohibited by other provisions of law.

The provisions of this section shall not apply to any rules or regulations heretofore or hereafter formulated pursuant to Section 6076.

(Amended by Stats. 1979, c. 653, p. 2013, § 12.)

17506.5. Board within the Department of Consumer Affairs; Local Consumer Affairs Agency; Definitions

As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

(Amended by Stats. 1979, c. 897, p. 3103, § 4.)